HOW TO BECOME A BARRISTER.

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LONDON:

THE "LAW NOTES" PUBLISHING OFFICES,

25 & 26, CHANCERY LANE, W.C.

1912

INTRODUCTION.

No book could pretend to cover every point that may possibly arise in the process of becoming a Barrister, and there are many matters upon which the intending candidate will do well to seek expert advice given with an eye to his own special circumstances. At the same time, it is hoped that the following pages will afford such sufficiently detailed information as to the procedure to be followed in order to obtain a call to the Bar as to prove of practical assistance to those who desire to achieve that object.

Before proceeding, however, to a more minute discussion of the subject, it will be well to indicate briefly the course to be followed. In its general outline that course is as follows:—

Having passed (or been exempted from) one of the Examinations in general knowledge hereinafter mentioned, the candidate must get admitted to an Inn and proceed to keep his terms by eating his dinners. Since he cannot, as a general rule, be called till he has kept twelve terms, and since there are four terms in each year, it will be seen that the candidate must be prepared to wait for his call for about three years.

During this time the candidate will be able to busy himself with the legal Examinations he is required to pass. The Bar Examinations are divided into two

parts. Both of these can, if desired, be taken simultaneously, or they can be taken separately. The first part consists of four subjects, and these again may, if desired, be taken one by one. The second part (known as the Bar Final) cannot be thus split up, nor can a student be allowed to pass in this, unless at the same or an earlier time he has successfully taken all the subjects making up Part I.

The student may sit for these Examinations at any period, subject to his not being allowed, as a rule, to take the Final till he has kept six terms. Moreover, he will not be able to obtain his call till he has kept the full twelve terms.

The majority of students avail themselves of the facilities thus afforded for taking the Examination piecemeal; the desirability or otherwise of so doing must, of course, depend on the circumstances of each individual case.

The necessary terms having been kept, and both parts of the Examination successfully negotiated, the student will be able to receive his call and become a Barrister-at-Law.

The necessary expenses involved vary slightly in the case of the different Inns, as to which information is given later.

A more minute account of all these matters will be found below.

HOW TO BECOME A BARRISTER.

In order to become a Barrister a student must join one of the Inns of Court. At present there are four of these Inns or Societies, viz., the Inner Temple, the Middle Temple, Lincoln's Inn and Gray's Inn. These Inns are governed by certain of their members who are termed Benchers, and it is these gentlemen who have the power of calling students to the Bar, and without such a call no one has the right of practising as a Barrister.

The Inns have united in issuing "Consolidated Regulations" as to the admission of students, and the course to be pursued for call to the Bar. These Consolidated Regulations can be obtained on application to the Sub-Treasurer of the respective Inns.

Admission to an Inn.

Previous to October, 1910, in order to obtain admission to one of the Inns it was necessary to pass what was known as the "Preliminary" Examination. This examination was conducted by the Board of Examiners appointed by the four Inns of Court. Since 1st of October, 1910, this examination has been abolished, and instead of it every student seeking admission (with some exceptions which will be presently mentioned) must have passed one of the following examinations:—

Examinations to be taken prior to Admission.

Any examination held by any university in the British Dominions, approved by the Council of Legal Education, which entitles those who pass it to a degree of that university.

Any examination which entitles those who pass it to enter the Indian Civil Service or the Consular Service, or to a commission in the Army or Navy, or to an Eastern cadetship.

The Responsions Examination in stated subjects of the University of Oxford.

The Previous Examination of the University of Cambridge, Parts I. and II.

The Matriculation Examination of the Universities of London, Liverpool, Manchester, Leeds, Sheffield, Wales, Birmingham and Bristol.

The Matriculation Examination of the Royal University of Ireland, of Queen's College, Belfast, and of the Queen's University, Belfast.

The Senior Grade Examination of the Intermediate Education Board for Ireland.

The Qualifying Examination of the Royal Military College, Sandhurst, and of the Royal Military Academy, Woolwich.

The Preliminary Examination of the Universities of Edinburgh, Glasgow, St. Andrews and Aberdeen.

The Principal or Ordinary Entrance Examination of the University of Dublin.

The Oxford Senior Local Examination.

The Cambridge Senior Examination.

The Examination for the School Certificate held by the Oxford and Cambridge Schools Examination Board and the Examination for the Higher Certificate held by the same Board.

The School Examination (Matriculation Standard) of the University of London.

It is, however, provided that the Masters of the Bench of the Inn of Court to which a person desires to be admitted as a student shall have power to relax or dispense with the necessity of producing a certificate of having passed one of the above-mentioned examinations in any case in which they think special circumstances justify such a course.

It is rather too early at present to ascertain the effect of this provision. So far there have been very few cases where the examination has been dispensed with, but a student who finds

that he cannot produce a certificate of having passed one of the above-mentioned examinations, if he thinks he has grounds which would justify the Masters of the Bench making an exception in his case, should certainly make application to the Bench accordingly, setting out the circumstances which in his opinion entitle him to exemption.

We believe that in special circumstances consideration would be given to a certificate obtained from such student's former schoolmaster if such certificate stated that at the time such student left school he possessed sufficient knowledge to enable him to pass an examination of the standard required.

We do not, however, think that the Masters of the Bench will, save in very exceptionable circumstances, avail themselves of this provision of exemption, and a student would be well advised to consider seriously the question of at once setting to work on one of the examinations which have in the majority of cases to be passed before admittance to one of the Inns of Court.

Exemptions from Examination before Admission.

The following persons, however, are excused from passing any of the above-mentioned examinations:—

Irish Barristers,

With regard to whom it is provided that so long as the regulations affecting the call to the Bar in Ireland remain substantially as at present any member of the Bar of Ireland of three years' standing at the Irish Bar may, upon presenting a certificate of his call duly authenticated and a certificate from the Attorney-General or the Solicitor-General of Ireland that the applicant is a fit and proper person to be called to the English Bar, become a member of an Inn of Court and be called to the English Bar upon keeping three terms without submitting to any examination.

Colonial Barristers.

While the two branches of the profession are kept distinct in New South Wales, Ceylon and the Cape of Good Hope, as at present, and the Regulations affecting the call to the Bars of those Colonies remain substantially as they are at present, any member of the Bar of New South Wales, or of the Bar of Ceylon, and any member of the Bar of the Cape of Good Hope, qualified under the Charter of June, 1834, the Acts of 1858 and 1873, or either of them, being a Barrister of three years' standing, may on presenting a certificate of call to any of such Bars duly authenticated, and a certificate by a Judge of the Supreme Court of the Colony, and by the Attorney-General or Senior Law Officer thereof, that the applicant is a fit and proper person to be called to the English Bar, become a member of any Inn of Court, and be called to the English Bar on keeping three terms without submitting to any examination.

Vakils.

A Vakil, on production of a certificate that he is on the roll of Vakils of a High Court of India, is excused the necessity of passing any of the examinations which are now substituted for the defunct Bar Preliminary Examination.

Solicitors.

A considerable number of Solicitors from time to time seek call to the Bar. The circumstances under which they can do so will be dealt with later, but it may be remarked here that in such a case the Solicitor may be exempted by the Masters of the Bench of the Inn to which he seeks admission from passing any of the examinations which are now accepted instead of the Preliminary, provided he makes application; and in practice it would seem exception is usually made.

Declaration to be made by an Applicant to an Inn of Court.

Every student who applies to be admitted as a student of any Inn of Court shall make a declaration in the following form :—

I, ——, of ——, a British subject [*if the applicant is not a British subject, omit the words a British subject and state nationality*], aged ——, the —— son of [*add further, profession, if any, and the condition in life and occupation, if any, of the applicant*] ——, do hereby declare that I am desirous of being admitted a student of the Honourable Society of —— for the purpose of being called to the Bar, or of practising under the Bar, and that I will not, either directly or indirectly, apply for or take out any certificate to practise directly or indirectly as a Pleader or Conveyancer, or Draftsman in Equity, without the special permission of the Masters of the Bench of the said Society.

And I do hereby further declare that I am not and do not directly or indirectly act in the capacity of a Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court, original or appellate, Clerk to any Justice of the Peace, Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy-Receiver or Liquidator under any Bankruptcy or Winding-up Act, Chartered, Incorporated or Professional Accountant, Land Agent, Surveyor, Patent Agent, Consulting Engineer, Clerk to any Judge, Barrister, Conveyancer, Special Pleader or Equity Draftsman, Clerk of the Peace or Clerk to any officer in any Court of Justice.

And that I do not either directly or indirectly act in any capacity similar to any of those above enumerated.

And that I am not and do not act as Clerk to, nor am I in the service of, any person acting in any of the above capacities, or in any capacity similar thereto (except as a pupil of Mr. or Messrs. ——).

And that I do not hold any appointment which involves the

performance of duties analogous to those of a Clerk to any officer in any Court of Justice.

And that I am not engaged in trade, nor am I an undischarged bankrupt.

Certificate of Good Character.

Besides making the above declaration, the applicant is required to produce a certificate of good character.

If the applicant or his family permanently resides in the United Kingdom, certificates must be obtained from two responsible persons resident in the United Kingdom who have known him personally for one year or upwards, and have had opportunities of judging of his character.

If neither the applicant nor his family permanently resides in the United Kingdom, one of such certificates shall be from a responsible person who has known him personally for one year or upwards, and has had opportunities of judging of his character, and such applicant shall also produce—

(a) if he has received, or is still receiving, his general education in the United Kingdom—a certificate from the head of his school or college, or from his tutor.

(b) In all other cases—
if he is a native of India, a certificate from the Collector or Deputy Commissioner of the district in which his family resides, or if his family resides in a Native State, from the Political Officer attached to the Native State or an officer of high rank representing the Indian Government in the State.

If he is not a native of India, a certificate from a judge, magistrate, or other person holding a similar official position in the place or district in which the applicant resides.

The certificate must state the name, address, and profession, occupation, or position of the person giving it, and what opportunities he has had of judging of the character of the applicant, and that the person giving it believes the applicant to be a person of respectability and fit to be admitted as a

student of an Inn of Court, and shall be in the following form or to the like effect:—

I (*name*), of (*address and profession, occupation, or position*), certify that (*name and description of applicant*) has been known to me personally for upwards of —— years last past. I have had the following opportunities of judging of his character (that is say):—

I believe him to be a gentleman of respectability and a proper person to be admitted as a student of the Honourable Society of —— with a view to being called to the Bar.

Dated this —— day of ——, 191—.

(Signature) ——.

Provided that the Benchers of the Inn of Court to which the applicant seeks admission may, in special circumstances, accept such other evidence of good character as they may deem sufficient.

Special Regulations as to Indian, Colonial and Foreign Students.

When an Indian, Colonial, or Foreign student has been admitted to any Inn of Court, a notification of his admission with the usual particulars as to his name and description, shall be transmitted to the Registrar of the principal Court of Civil Jurisdiction in the Province, Colony or place to which he belongs, with a request that such notification may be screened or otherwise displayed in the Bar Library or other convenient place in the said Court, for the information of the Bar.

Fee on Application for Admission.

Every person seeking to be admitted as a student must pay the sum of one guinea upon applying for the form of admission.

The Keeping of Terms.

It is important to remember that the expression Terms means the terms as fixed by the Inns of Court for purposes of call,

and these differ in point of date from the university terms and from the sittings of the High Court.

In order to "keep terms" Bar students must (as a rule) dine six nights in each term. But students who shall at the same time be members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, Liverpool, Manchester, Leeds, Sheffield, Birmingham, Bristol, the Royal University of Ireland, St. Andrews, Aberdeen, Glasgow, Edinburgh, or of any other University in the United Kingdom founded by Act of Parliament or Royal Charter, shall be enabled to keep terms by dining in the halls of their respective Inns of Court any three days in each term.

It is important to remember that no day and attendance in hall shall be available for the purpose of keeping term, unless the student attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said, unless the acting Treasurer on any day during dinner shall think fit to permit the student to leave earlier.

Twelve terms must be kept in all, unless the Benchers for special reasons dispense with the keeping of any term or terms not exceeding two. The holder of a studentship or certificate of honour is usually allowed to dispense with two terms (Consolidated Regulation 59).

Solicitors.

With regard to Solicitors who desire to be called to the Bar—a student who, at any time previously to his admission at an Inn of Court, was a Solicitor in practice for not less than five consecutive years, either in England, or in any Colony or Dependency, and who in either case was admitted in England, and has ceased to be a Solicitor before his admission as a student, may be examined for call to the Bar without keeping any terms, and may be called to the Bar upon passing the public examination required by these rules, without keeping any terms.

But such Solicitor must have given at least twelve months'

notice in writing to each of the four Inns of Court—and to the Law Society—of his intention to seek call to the Bar, and must also produce a certificate that he is a fit and proper person to be called to the Bar, which certificate must be signed, if his practice was in England, by two members of the Council of the Law Society, and if his practice was in a Colony or Dependency, by the Chief Justice of such Colony or Dependency.

Before, however, a Solicitor is admitted as a student he must have ceased to have any capital invested in the business with which he was formerly connected—or to be in any way interested in such business—or to have his name connected therewith. And it is necessary that he should make a declaration to that effect.

A student desiring to take advantage of this rule (Consolidated Regulations, Rule 15) must pay the same fees as are payable by other students—make the usual deposit, enter into the usual bond for Commons and pay the sum of 5*l.* 5*s.* for the forms of notice required by this rule, in addition to the usual student's fees on entrance to an Inn of Court.

The following Resolutions relating to the above Rule have been adopted by the Four Inns.

1. "A Solicitor in practice for not less than five consecutive years" includes a Solicitor in actual practice on his own account during the qualifying period, although he may at the same time have been acting as a clerk to a Solicitor or firm of Solicitors. The five consecutive years need not be the five years immediately preceding his admission at an Inn of Court, or his notice of intention to be called to the Bar. There is no limit to the time after a Solicitor has ceased to take out his certificate in which he may claim the advantage of Rule 15. "Practice for not less than five consecutive years . . . in any Colony or Dependency," means practice for not less than five consecutive years in any one Colony or Dependency.

2. On receipt from a Solicitor of a notice of his intention to seek call under Rule 15 his name and description shall be forthwith screened, and so continue till he is called to the Bar,

or the notice is withdrawn. The notice must state the Inn at which he proposes to seek call to the Bar and must be on a form to be obtained from that Inn. Apart from special circumstances the application for admission to the Inn of Court named in the notice must be made before or during the term next or next but one after the expiration of such notice.

3. A student coming under Rule 15 must not be examined for call to the Bar before the twelve months' notice prescribed by the Rule has expired. Such a student must, when he is examined for call to the Bar, produce the certificate required by the Rule.

Exemption from passing any examination under Rule 2 is not to be granted as a matter of course.

Regard being had to the foregoing resolutions, a Solicitor crossing over to the Bar must take great care in framing the twelve months' notice which he is required to give, for under the resolutions, as construed by the Inns, he is required to pass his examinations and complete his call within two terms after his notice has expired. It has sometimes resulted that where sufficient attention has not been paid to the matter of dates the candidate has found it necessary to give a fresh notice, involving delay in getting called.

Where due care, however, has been taken as to framing the notice, &c., it will be seen that it is possible for a Solicitor to continue to practise as such till within a month or two of his becoming a barrister.

The Four Inns of Court.

Every student who desires eventually to become a Barrister must be a member of one of the Inns of Court.

The four Inns that now remain are the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. A few particulars of these four Inns, fees payable, &c., will be useful: and first as to

The Inner Temple.

A student who desires to become a member of the Inner Temple should write to the Sub-Treasurer of the Inn for an Admission

Form, which will be forwarded on receipt of one guinea. This Form and the Certificates endorsed on it should be filled up and signed by the Applicant and two responsible persons, and either sent or brought to the Treasurer's Office, Inner Temple, together with a certificate of having passed one of the Examinations named in the Schedule to the Consolidated Regulations, a list of which has already been given.

The payments on admission as a student are :—

	£	s.	d.
Stamps	25	1	3
Admission and Lecture Fees . . .	15	15	0
Deposit (returnable without interest, on call, death, or withdrawal)	100	0	0
	£140	16	3

This deposit is not required from any person who shall, previous to his being called to the Bar, produce a certificate of his being a member of the College of Advocates in Scotland, or of his having a degree, or kept two years' terms at any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Victoria University of Manchester, the University of Leeds, Liverpool, Birmingham or Wales, or the Royal University of Ireland.

Before commencing to keep terms a student must pay his fees, and must attend at the Treasurer's Office in person to sign the books and bond for the payment of Commons and Dues, and to be formally admitted.

Two sureties (members of an Inn of Court or householders) are required to the bond, unless the student makes a Commons' deposit of 50*l.*; out of this all Commons and Dues would be paid, and the balance returned on call, death or withdrawal.

The sureties, if any, must attend at the Treasurer's Office to complete the bond before the student can dine in Hall.

Commons are charged 1*l.* 2*s.* for keeping the term—no charge being made for a term when the student does not dine.

A student's dues amount to 6*s.* 3*d.* each term, and continue payable so long as he remains a student.

The dinner hour is 7 p.m.

The payments on call to the Bar are:—

	£	s.	d.
Stamps	50	0	0
Call fees and composition for Bar Dues . .	49	10	0
	£99	10	0

Every application for admission made by a person engaged in any trade or profession must be approved by the Treasurer.

It is not the practice of the Inner Temple to call to the Bar any person engaged in trade.

The Middle Temple.

As in the case of the Inner Temple, the Admission Form (which will be forwarded by the Under-Treasurer) must be brought or sent to the Treasury, Middle Temple, together with a certificate of having passed an examination in accordance with the Consolidated Regulations, and two certificates as in the case of the Inner Temple, *six days* before the Applicant presents himself to pay the fees and complete his entrance.

The payments on admission are:—

	£	s.	d.
Stamps 25*l.* 1*s.* 3*d.*; Fees 15*l.* 5*s.* 0*d.* . .	40	6	3
Deposit (returnable on call, death or withdrawal)	50	0	0
	£90	6	3

Members of the Scotch and Irish Bars and the members of any of the Universities of Oxford, Cambridge, Dublin, London, Durham, the Royal University of Ireland, St. Andrews, Aberdeen, Glasgow, Edinburgh, or the Victoria University of Manchester shall, on production of a certificate or other sufficient evidence of membership, for the purposes of admission, either make a deposit of 50*l.* and give a bond without sureties, or give a bond with two sureties for the sum of 50*l.*, at their own option; but before call of such members of the aforesaid universities a degree must be taken or two years' terms kept at one of the aforesaid universities, or, in the case of the University of London and the Royal University of Ireland, two years' attendance at lectures at one of the colleges affiliated to

the university; otherwise interest at the rate of four per cent. on the said sum of 50*l.* will be charged in the case of those who have not made a deposit.

Instead of making the above-mentioned deposit of 50*l.*, a student has the option of giving a bond of 50*l.* with two sureties (Barristers or householders in England). A student who pays the 50*l.* enters into a personal bond without sureties. Before commencing to keep terms a student must pay the admission fees and attend personally at the Treasury, Middle Temple, with his two sureties, if any, to execute the bond.

Annual duty, 1*l.*

Commons, 2*s.* per dinner.

Fee for keeping term, 10*s.*

Payments on Call.

	£	*s.*	*d.*
Stamp 50*l.*; Fee 37*l.* 10*s.* 0*d.*	87	10	0
Commutation for annual Duty of 1*l.* . . .	12	0	0
	£99	10	0

No duty is payable after call.

Lincoln's Inn.

The payments for admission at this Inn are:—

	£	*s.*	*d.*
Fee for the Admission Form (to be obtained before admission)	1	1	0
(This will be sent on receipt of one guinea.)			
Entrance Fees.	8	12	9
Stamps and Lecture Fee	30	6	3
	£40	0	0
Deposit (returnable without interest on call, death or withdrawal)	50	0	0
	£90	0	0

Members of the Scotch and Irish Bars and members of any of the Universities of Oxford, Cambridge, Dublin, London,

Durham, Liverpool, Manchester, Leeds, Sheffield, Birmingham, Bristol, the Royal University of Ireland, St. Andrews, Aberdeen, Glasgow, Edinburgh, or the Victoria University of Manchester, or of any other university in the United Kingdom founded by Act of Parliament or Royal Charter, shall, on production of a certificate of membership and of having passed a public examination in such university, be entitled either to make such deposit or to give such bond as aforesaid, at their own option.

No person shall be accepted as a surety unless he shall be a householder resident in England. Other students must either make the deposit and give a personal bond, with two sureties, in the sum of 50*l.* as may be required.

A student's dues amount to 5*s.* each term, and continue payable till call, death or withdrawal.

Commons (including gowns) are charged 1*l.* 2*s.* 6*d.* for keeping each term.

The dinner hour is 6 p.m. on weekdays and 5 p.m. on Sundays.

The payments on call are:—

	£	*s.*	*d.*
Stamps and Fees	82	0	0
Composition for Future Dues	12	0	0
	£94	0	0

No dues are payable after call.

Gray's Inn.

At Gray's Inn the fees on admission are:—

	£	*s.*	*d.*
Admission Document (to be obtained before admission)	1	1	0
Stamp Duty payable to Government	25	0	0
Admission Fees	8	7	6
Lecture Fee	5	5	0
	£39	13	6

The only other fee payable by students is a fine of 5*s.* in

respect of any term which a student fails to keep. Students may compound for all such charges by paying in advance the sum of 12*l.* described as "Composition for Annual Dues" in the table of "Fees on Call." (See below.)

Fees on Call.

	£	*s.*	*d.*
Stamp Duty payable to the Government	50	0	0
Library Fund	6	6	0
Call Fees	20	16	4
Composition for Annual Dues after Call	12	0	0
	£89	2	4

No dues are now payable after call to the Bar.

Fee payable by a Solicitor on giving Notice of his Intention to seek Call to the Bar	£5	5	0
Fee payable on Withdrawal from the Societies	7	1	0

Every student must elect on admission either to deposit 50*l.* in addition to his admission fees or to execute a bond, in the penalty of 50*l.*, with two sureties (householders in the United Kingdom), whose names must be first submitted to the Under Treasurer of the Inn. The deposit is returnable on call to the Bar or withdrawal from the Society. If sureties are provided and approved they must sign the bond at the office of the Inn, unless in special circumstances permission is given for its execution before a Justice of the Peace or a Commissioner for Oaths elsewhere. It is not necessary that the sureties should attend together.

Examinations for Call to the Bar.

There are four examinations for Calls to the Bar in each year—one before each term, and in sufficient time to enable the requisite certificates to be granted by the Council on or before the first day of each term. It should be remembered that the Inns of Court retain the old terms, which differ in date from the sittings of the High Court.

Rules regulating the examination are published from time to

time, and are obtainable from the Council of Legal Education (a committee of Benchers to whom the control of legal education is entrusted by the Inn). The rules must be carefully referred to in respect of any particular examination for reasons which will appear later (*post*, p. 18). The provisions of the Consolidated Regulations on the subject are in substance these:—

The Bar Examinations consist of two parts. No student will receive a certificate of fitness for Call to the Bar unless he has passed a satisfactory examination in both parts.

Every student must satisfy the Examiners in each of the following subjects:—

PART I.

I. Roman Law. (But see p. 18, *post*.)
II. Constitutional Law (English and Colonial) and Legal History.
III. Criminal Law and Procedure.

Every student must also satisfy the Examiners in one of the following subjects:—

IV. Real Property and Conveyancing, or
Hindu and Mahomedan Law, or
Roman Dutch Law.

The subjects can be taken separately.

PART II.

THE FINAL EXAMINATION.

Every student will be examined in the same subjects; four papers will be set, namely:—

(a) A paper in Common Law.
(b) A paper in Equity.
(c) A paper on the Law of Evidence and Civil Procedure.
(d) A general paper on the above subjects (a) (b) (c).

Every student must present himself for these four papers at the same examination.

Any student, however, who before 12th January, 1908, passed in the subject "Evidence, Procedure (Civil and Criminal) and

Criminal Law" under the former regulations, will for the present be allowed the following option:—

(a) He may, if he wishes, proceed under these regulations, and present himself for subject IV. of Part I. and for the Final Examination as now constituted, *or*

(b) He may, if he prefers, be excused from passing separately in subject IV. of Part I., and take the paper on Real Property and Conveyancing as part of his Final Examination instead of the paper on the Law of Evidence and Civil Procedure, Part II. (c), in which case he will be asked in his general paper questions on Real Property and Conveyancing instead of questions on the Law of Evidence and Civil Procedure.

A student coming under the present regulations may present himself for examination in all or any of the subjects I., II., III. and IV. of Part I. of the Bar Examinations at any time after admission, and if the subjects are taken singly they may be taken in any order. But without the special leave of the Council no student shall present himself for Part II. unless he has kept six terms.

Further, no student will be allowed to pass in Part II. of the Bar Examination unless he has previously, or at the same examination, satisfied the Examiners in all four subjects of Part I. But if a student takes up any subject of Part I. at the same time as Part II., and fails in Part II., he will nevertheless be allowed to pass in any subject of Part I. in which he has satisfied the Examiners.

A student who presents himself for any examination, and whose papers show that he had no reasonable expectation of passing, will not be admitted for examination again until the expiration of such time as the Council may direct.

In all examinations successful students will be classified according to merit. In each class the names will be arranged alphabetically, except as to Class I. and Class II. in the Final Examination, in which the names will appear in order of merit. A student who obtains a first class in the Final Examination is awarded a Certificate of Honour.

The Council may accept as an equivalent for the examination in Roman Law:—

(i) A degree granted by any University within the British Dominions, for which the qualifying examination included Roman Law.

(ii) A certificate that any student has passed any such examination—though he may not have taken the degree for which such examination qualifies him.

Provided the Council is satisfied that the student before he obtained his degree, or such certificate, passed a sufficient examination in Roman Law.

The rules for the examination of students above referred to must be carefully consulted with regard to the particular examination to which they relate, since they, to some extent, modify the subjects of examination above mentioned as being required by the Consolidated Regulations and indicate the topics to which special attention is to be paid.

Studentships and Prizes.

A student who obtains a First Class at the Final Examination, Part II., and who either before or at such examination passes in subjects I., II., III. and IV. of Part I., will receive a certificate of honour.

At the Hilary and Trinity Examinations in each year a studentship of one hundred guineas per annum, tenable for three years, is awarded to the student who passes the best examination in Part II. and obtains a certificate of honour, but the Council will not award a studentship if the result of the examination be such as, in their opinion, not to justify the award. When candidates appear to be equal or nearly equal in merit, the Council may divide the studentship between them equally, or in such proportion as they consider just. And at the Easter and Michaelmas Examinations the Council may award to the student who passes the best examination in Subject II. (Constitutional Law, English and Colonial, and

Legal History) a special prize of 50*l.*, and a similar prize to the student who passes the best examination in Subject III. (Criminal Law and Procedure).

But it must be remembered in order to avoid disappointment that no student will be eligible to a studentship or for a prize who is over twenty-five years of age on the first day of the examination.

The Bacon and Holt Scholarships.

The attention of students is also called to the examination for the "Bacon" and "Holt" Scholarships.

The studentships are of the yearly value of 60*l.* and 50*l.* respectively, and are tenable for two years. They are open only to students of Gray's Inn.

Every competitor must, on the first day of the examination, have kept at least one term as a student of the Society, and must not be more than twenty-three years of age.

Competitors will be examined in Constitutional Law and History, the Elements of English Law and the Elements of Jurisprudence. The papers set will be of a standard similar to that required in the Honour Law Schools of the Universities.

Arden Scholarships.

Gray's Inn also awards the Arden Scholarships, which are three in number, and of the value of 60*l.* each. The benefit of the same cannot be received until the scholar has been called to the Bar. Each scholarship is tenable for three years from the scholar's call to the Bar, provided he remains a member of the said Society, does not become a member of any other Inn of Court, retains the personal benefit of the income of the scholarship, and is not engaged in any other occupation than that of barrister.

Further particulars should be obtained as to these scholarships from the Sub-Treasurer of Gray's Inn.

H. C. Richards Essay Prize.

A prize of approximately 12*l.* 12*s.* 0*d.*, founded by the late H. C. Richards, Esq., K.C., M.P., formerly a Master of the Bench of Gray's Inn, is open to competition for an essay on a selected subject of Ecclesiastical Law.

Any member of Gray's Inn, not being a trustee of the H. C. Richards Fund or an Examiner for the H. C. Richards Prize, or a person who has already gained that prize, may compete by delivering to the Under-Treasurer of the Society before the 2nd day of November an essay on the subject selected for the year.

Further particulars as to the H. C. Richards Essay Prize should be obtained from the Sub-Treasurer of Gray's Inn.

In addition to the above, Gray's Inn also offers the following annual prizes:—

(1) A prize for studentship or certificate of honour at the Final Examination of the value of 50*l.*

(2) The Lee Prize, awarded annually for an essay (particulars of which can be obtained from the Sub-Treasurer), of the value of 25*l.*

(3) The Society's Prize (awarded on the recommendation of the Examiners for the Lee Prize) of 10*l.* 10*s.* 0*d.*

The Society of Gray's Inn also provides a sum of 200 guineas per annum, which is made available for students desirous of reading in the chambers of a barrister.

The following members of the Society only shall be eligible to apply for assistance:—

(a) Students of the Society who have passed their Final Examination and intend to be called to the Bar forthwith by Gray's Inn and to practise in England.

(b) Barristers of the Society of not more than one year's standing at the Bar who intend to practise in England.

The student or barrister desiring assistance must submit, before the first day of Trinity Term in each year, a personal

written application addressed to the Under-Treasurer of the Society, marked "Confidential."

Such application shall contain (a) a statement setting out the applicant's qualifications and the ground of his application; (b) a declaration that he intends to practise as a barrister in England, and that he wishes to qualify himself for actual practice by reading in the chambers of a practising barrister; and in the case of an applicant who is not yet called to the Bar that he intends to be called to the Bar forthwith by the Society of Gray's Inn.

All such applications will be considered and dealt with by a Committee of the Benchers appointed for that purpose, which will meet in Trinity Term of each year.

The applicant will be required to read in the chambers of a barrister approved by the Committee.

Canvassing, either directly or indirectly, will be held to disqualify the applicant.

The following prizes are also offered by the Middle Temple: a prize of 50*l.* to each student of the Middle Temple who shall obtain a certificate of honour from the Council of Legal Education, including any student of the Inn who may obtain the 100 guineas Studentship.

The J. J. Powell prize of 15*l.*, awarded in each year to the student of the Middle Temple, being a native of the United Kingdom, who shall have been examined for a Pass Certificate before Hilary Term, and who shall be certified by the Council of Legal Education to stand highest amongst the members of the Middle Temple in Common Law.

The Campbell-Foster prize of 10 guineas, awarded in each year to the student of the Middle Temple who shall have been examined for Honours at the examination before Easter Term, and who shall be certified by the Council of Legal Education to stand highest amongst the members of the Middle Temple in Criminal Law.

The J. P. Murphy prize of 10*l.*, awarded in each year to the student of the Middle Temple, born of Irish parents, resident in Ireland, who shall be certified by the Council of Legal Education to have passed the Final Examination for the

Bar held immediately before Trinity Term, and to have obtained more marks for his answers to the paper on Common Law than any other such candidate who has passed such examination.

The Middle Temple also grants pupil studentships with a view to assisting members of the Society in acquiring a knowledge of the professional practice of the law. Four hundred guineas is distributed at the discretion of the Bench for this purpose; and students who have passed their Final Examination and undertake to be called to the Bar in due course by the Society, and who will afterwards seek to practise in the United Kingdom, as well as barristers of the Society of not more than one year's standing at the Bar, when first selected for assistance, and who undertake to seek to practise in the United Kingdom, are eligible for these benefits.

Further particulars of these studentships should be obtained from the Under-Treasurer of the Middle Temple.

Lincoln's Inn also gives a prize of 50*l.* to each of its students who obtains a certificate of honour from the Council of Legal Education, under Clause 55 of the Consolidated Regulations of the four Inns of Court, including any student of the Inn who obtains the 100 guinea Studentship. Lincoln's Inn has also a scheme for the encouragement of reading in barristers' chambers. Particulars of this scheme can be obtained by any member of Lincoln's Inn by applying at the Steward's Office. Further, the Masters of the Bench of the Inner Temple, to encourage the students of the Inn in acquiring a knowledge of the proper application of the law in practice, have resolved that a sum not exceeding 400 guineas per annum should be available for the purpose of encouraging the practice of reading in chambers among members of the Society. Only students of the Society who have passed their Final Examination and intend to be called to the Bar forthwith by the Society—or Barristers of the Inner Temple of not more than one year's standing at the Bar—are eligible.

Such persons as desire to avail themselves of this advantage must submit a personal written application addressed to the Sub-Treasurer, and marked "Private."

Such application should contain (a) a statement setting out

the applicant's qualifications and the grounds of his application; (b) a declaration stating that he intends to practise as a Barrister, and that he wishes to qualify himself for actual practice by reading in the chambers of a practising Barrister.

It will be noticed that only students who have passed the Final Examination can apply.

The rules for examination of students indicate the date of publication of the result of any particular examination.

The Barstow Scholarship.

The examination for this Scholarship will be held annually in the month of December. It is open to all members of an Inn of Court who have passed the Final Bar Examination and have not been called to the Bar.

The scholarship is tenable for two years, and the holder is entitled during that period to half the nett Income of the Trust Fund, which now consists of 4,927*l.* 4*s.* 2*d.* Consols. No scholarship will be awarded unless the Council is satisfied with the standard of the answers given.

The examination will consist of papers in Jurisprudence, International Law (Public and Private) and Constitutional Law and Legal History.

As to the date of each examination and the books recommended to be read for the same, candidates should get the latest information from the Clerk of the Council of Legal Education, 15, Old Square, Lincoln's Inn.

Books to be Read.

It is impossible to lay down any definite rules as to the books which the student should read. This must depend largely on the student's own personal equation—the amount of time he can devote to his reading, and whether he aims merely at securing a pass or something more. It is therefore well for the student to obtain advice as to the reading that would be suitable, having regard to his own special circumstances, from some one who is competent to give assistance, and the following

list is merely given by way of general suggestion. Moreover, the rules regulating the Examination vary slightly from time to time as to the exact subjects to be taken. Thus, the portions of equity to which it is desirable to pay special attention vary at different Examinations, and the student should inform himself as to the special reading necessary for the Examination at which he proposes to present himself. It must not be assumed, therefore, that no other books than those mentioned can ever be usefully read, or that it is necessary to read all those mentioned. Many of the books referred to are given merely by way of alternative, though no book, it is believed, has been mentioned which would not be of use for the purposes of the Examination. It is, perhaps, desirable to warn the student that it is essential to use the latest edition of any text-book he undertakes to read. A new edition is usually only issued when through changes in the law the old edition is no longer accurate, and to read an out-of-date text-book will in many cases be downright misleading.

The student would find it useful to have by him continually a copy of the Student's Statute Law, which is often of great service for purposes of reference in connection with other text-books.

He will also find it desirable to keep himself abreast of fresh developments in the law such as recent cases and novel legislation. This may best be done by a perusal of some one or more of such weekly papers as the *Law Times* or the *Law Journal* or the monthly paper *Law Notes*, which contains in each number a digest of cases for the month, a series of articles on legal topics, and notes relating to the Bar Examinations.

BOOKS TO READ.

Roman Law.

Leage's Roman Private Law.
Hunter's Introduction to Roman Law.
Moyle's Imperatoris Justiniani Institutiones, or
Sandars' Justinian's Institutes.
Maine's Ancient Law.

Constitutional Law and Legal History.

Anson's Law and Custom of the Constitution.
Maitland's Constitutional History of England.
Taswell-Langmead's Constitutional History.
Carter's History of Legal Institutions.
Dicey's Law of the Constitution.
Thomas' Cases on Constitutional Law.
Storry Deans' Legal History.
And for purposes of reference :—
Pollock and Maitland's History of English Law.
Holdsworth's History of English Law.

Criminal Law and Procedure.

Kenny's Outlines of the Criminal Law.
Harris' Criminal Law.
Kenny's Criminal Cases.
Warburton's Criminal Cases.
Stephen's Digest of the Criminal Law.
Student's Criminal and Magisterial Law.
And for purposes of reference :—
Archbold's Pleading and Evidence in Criminal Cases.

Real Property and Conveyancing.

Williams' Real Property.
Topham's Real Property.
Strahan's Law of Property.
Elphinstone's Introduction to Conveyancing.
Student's Conveyancing.
Hood and Challis' or Wolstenholme's Conveyancing and Settled Land Acts.
Strahan's Mortgages.
Strahan's Wills.
And for purposes of reference :—
Dart's Vendor and Purchaser.
Tudor's Leading Cases.
Carson's Real Property Statutes.

Hindu and Mahomedan Law or Roman-Dutch Law.

So few English students take these subjects that it is not considered necessary to set out a list of books thereon.

Common Law.

Odgers' Common Law.
Anson's Contracts.
Pollock's, or Salmond's, or Underhill's Torts.
Kenny's Cases on the Law of Torts.
Indermaur's Common Law.
Goodeve's Personal Property.
Williams' Personal Property.
And for purposes of reference:—
Smith's Leading Cases.

Equity.

Snell's or Smith's Equity.
Strahan and Kenrick's Equity.
Ashburner's Equity.
Brett's Equity Cases.
Maitland's Equity.
Underhill's or Hart's Trusts.
Pollock's Partnership.
Mawes's Administration of Assets.
And for purposes of reference:—
White and Tudor's Equity Cases.

Law of Evidence and Civil Procedure.

Phipson on Evidence.
Wills on Evidence.
Best on Evidence.
Stephen's Digest of the Law of Evidence.
Odgers on Pleadings and Procedure.
Student's Practice of the Courts.
And for purposes of reference:—
The Annual Practice.

The Call to the Bar.

After the Bar student has passed the necessary examinations there will be nothing to prevent him being called to the Bar after he has completed the necessary number of terms. But it is not always wise to do so at once. The student may regard it as necessary to acquire further practical experience before taking the final plunge.

No student can be called to the Bar before he has attained 21 years of age—nor can he be called until his name has been

SCREENED

in the Hall, the Benchers' Room, and Treasurer or Steward's office of the Inn of Court of which he is a student twelve days in term before such call.

The name and description of every such student shall be sent to the other Inns, and shall also be screened for the same space of time in their respective Halls, Benchers' Rooms, and Treasurer or Steward's office.

No call to the Bar shall take place except during a term—and such call shall be made on the same day by each of the Inns, namely, on the sixteenth day of each term, unless such day shall happen to be Saturday or Sunday, and in such case on the Monday after—and every student shall, previous to call, make one of the following declarations:—

[DECLARATION TO BE MADE BEFORE CALL TO THE BAR BY ANY STUDENT WHO FIRST BECAME A MEMBER OF ANY INN OF COURT AFTER THE 25TH MAY, 1908.]

* Declaration to be made by a Student before Call to the Bar.

I ——, being desirous of being called to the Bar by the Honourable Society of ——, do hereby declare and undertake as follows:—

1. That I am not a person in Holy Orders [*or*, that I, being a person in Holy Orders, have not during the year next before the date of this

* This form of Declaration is only applicable to Students who became members of an Inn of Court after the 25th May, 1908. Any Student who became a member of any Inn of Court on or prior to the 25th May, 1908, will be required to make the following Declaration.

Declaration, held or performed any Clerical preferment or duty, or performed any Clerical functions, and do not intend any longer to act as a Clergyman].

2. That I am not and have never since my admission as a Student of this Honourable Society been, and that I do not act and have never since my admission as aforesaid acted either directly or indirectly in the capacity of a Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court original or appellate, Clerk to any Justice of the Peace, Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy Receiver or Liquidator under any Bankruptcy or Winding-up Act, Chartered or Incorporated or Professional Accountant, Land Agent, Surveyor, Patent Agent, Consulting Engineer, Clerk to any Judge, Barrister, Conveyancer, Special Pleader or Equity Draftsman, Clerk of the Peace, or Clerk to any Officer in any Court of Justice.

And that I do not act and have not since my admission as aforesaid acted either directly or indirectly in any capacity similar to any of those above enumerated:

And that I have not and have never since my admission as aforesaid been and that I do not act and have never since my admission as aforesaid acted as a Clerk to, nor am I nor have I since my admission as aforesaid been in the service of any person acting in any of the above capacities or in any capacity similar thereto (except as a Pupil of Mr. or Messrs. ———, of ———, from ———, 190 , to ———, 190) [*state name, address and profession or calling of the person or persons, firm or firms, whose Pupil the Declarant was, and the period or periods for which he was such Pupil*]:

And that I do not hold and have never since my admission as aforesaid held any appointment which involves the performance of duties analogous to those of a Clerk to any Officer in any Court of Justice:

And that I am not and have never since my admission as aforesaid been engaged in trade or an undischarged bankrupt.

3. That if called to the Bar *and so long as I remain a Barrister* I will not in this country or elsewhere except so far as may be there permitted or recognised be or act directly or indirectly in the capacity of a Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court original or appellate, Chartered, Incorporated or Professional Accountant, Patent Agent, Clerk to any Judge, Barrister, Conveyancer, Special Pleader or Equity Draftsman, Clerk to any Clerk of the Peace, or Clerk to any Officer in any Court of Justice, or in any similar capacity, or hold any appointment which involves the performance of duties analogous to those of a Clerk to any Officer of any Court of Justice, and that *so long as I am in practice as a Barrister* I will not in this country or elsewhere except so far as may be there permitted or recog-

nised be or act in the capacity of a Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy Receiver or Liquidator under any Bankruptcy or Winding-up Act, Land Agent, Surveyor, Consulting Engineer, Town Clerk, Clerk of the Peace, Clerk to any Justice of the Peace, Clerk to a Board of Guardians or Overseers, or Clerk in the Office of a County Council, nor will I hold any similar office, nor be nor act as a Clerk to or in the service of any person acting in any of the capacities last above enumerated or in any capacity similar thereto.

Dated this ——— day of ———, 191 .

(Signature) ———.

[Declaration to be made before Call to the Bar by any Student who became a Member of any Inn of Court on or prior to the 25th May, 1908.]

Declaration to be made by a Student before Call to the Bar.

I, —— being desirous of being called to the Bar by the Honourable Society of ——, do hereby declare and undertake as follows:—

1. That I am not a person in Holy Orders [*or* that I, being a person in Holy Orders, have not during the year next before the date of this Declaration, held or performed any Clerical preferment or duty, or performed any Clerical functions, and do not intend any longer to act as a Clergyman].

2. That I am not and have never since my admission as a Student of this Honourable Society been, and that I do not act and have never since my admission as aforesaid acted either directly or indirectly in the capacity of a Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court original or appellate, Clerk to any Justice of the Peace, Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy Receiver or Liquidator under any Bankruptcy or Winding-up Act, Chartered or Incorporated or Professional Accountant,[1] Land Agent, Surveyor, Patent Agent, Consulting Engineer,[2] Clerk to any Judge, Barrister, Conveyancer, Special Pleader or Equity Draftsman, Clerk of the Peace, or Clerk to any Officer in any Court of Justice.[3]

[1] In the case of a Student who was a member of any Inn of Court prior to the 22nd March, 1901, the words "or a Chartered or Incorporated or Professional Accountant" may be omitted in this clause of the Declaration.

[2] In the case of a Student who was a member of any Inn of Court prior to 18th April, 1905, the words "Land Agent, Surveyor, Patent Agent, Consulting Engineer" may be omitted in this clause of the Declaration.

[3] Where Regulation 3 has been held not to apply insert here "otherwise than as," &c.

And that I do not act and have not since my admission as aforesaid acted either directly or indirectly in any capacity similar to any of those above enumerated:

And that I have not and have never since my admission as aforesaid been and that I do not act and have never since my admission as aforesaid acted as a clerk to, nor am I nor have I since my admission as aforesaid been in the service of any person acting in any of the above capacities or in any capacity similar thereto[3] (except as a Pupil in a Solicitor's Office):

And that I do not hold and have never since my admission as aforesaid held any appointment which involves the performance of duties analogous to those of a Clerk to any Officer in any Court of Justice:[3] and[4]

And that I am not and have never since my admission as aforesaid been engaged in trade[5] or an undischarged bankrupt.

3. That if called to the Bar *and so long as I remain a Barrister* I will not in this country or elsewhere, except so far as may be there permitted or recognised, be or act directly or indirectly in the capacity of a Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court original or appellate, Chartered, Incorporated or Professional Accountant, Patent Agent, Clerk to any Judge, Barrister, Conveyancer, Special Pleader or Equity Draftsman, Clerk of the Peace, or Clerk to any Officer in any Court of Justice, or in any similar capacity, or hold any appointment which involves the performance of duties analogous to those of a Clerk to any Officer of any Court of Justice, and that *so long as I am in practice as a Barrister* I will not in this country or elsewhere, except so far as may be there permitted or recognised, be or act in the capacity of a Clerk to any Justice of the Peace, Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy Receiver or Liquidator under any Bankruptcy or Winding-up Act, Land Agent, Surveyor, Consulting Engineer, Town Clerk, Clerk to a Board of Guardians or Overseers, or Clerk in the Office of a County Council, nor will I hold any similar office, nor be nor act as a Clerk to or in the service of any person acting in any of the capacities last above enumerated or in any capacity similar thereto.

Dated this ——— day of ———, 191 .

(Signature) ———.

[3] Where Regulation 3 has been held not to apply insert here "otherwise than as," &c.

[4] In the case of a Student who was a member of any Inn of Court prior to 17th May, 1904, the words "held any appointment which involves the performance of duties analogous to those of a Clerk to any Officer in any Court of Justice" may be omitted from this clause of the Declaration.

[5] In the case of a Student who was a member of any Inn of Court prior to 17th May, 1904, the words "engaged in trade" may be omitted from this clause of the Declaration. Where Regulation 3 has been relaxed insert here "otherwise than as," &c.

APPENDIX.

QUESTIONS WITH ANSWERS.

Bar Examination, Trinity Term, 1912.

ROMAN LAW.

1. *Q. What was Postliminium? Describe its effects in different cases.*

A. By the *jus postliminii* property taken in war and retaken from the enemy was restored to the original owners—and captives on return to their own country were re-established in all their former rights. When the captive returned, all the time of his captivity was blotted out, and he was exactly in the position he would have been if he had not been taken captive. When a father returned he resumed all his rights over the property and his *patria potestas* over his children; when a child returned he regained his rights of succession and agnation, and at the same time he fell again under his father's *patria potestas.*

If the captive did not return from captivity the law considered him to have died at the moment of his captivity commencing, a point important with regard to testaments, and also as making children *sui juris*, and giving them all property acquired by them from the time of their parent's captivity.—Sandars' Justinian, 9th ed., pp. 50, 51.

2. *Q. Give an account of manumission of a slave vindictâ. What were the necessary conditions in the early Empire for manumission as a citizen?*

A. Manumission *per vindictam* was a fictitious suit, in which a person claimed that the slave was free born. The master admitted the claim, the magistrate gave an order establishing the slave's freedom, whereupon the master touched the slave with a rod, and turning him round three times let him go.

The clearest expression of the master's intention to liberate his slave had no effect unless it was clothed with the necessary legal formalities, and if there were a flaw in the manumission, the master's heir might reclaim him back into slavery. The *Lex*

Junia Norbana declared that persons imperfectly manumitted should enjoy the same rights as *Latini Coloniarii*. They were free, but subject to various disabilities. Justinian finally enacted that whenever a master desired to give freedom to a slave, whether the old forms were observed or not, the slave should become a citizen as well as free.—Hunter's Introduction to Roman Law, pp. 22—24.

3. *Q. Explain the nature of agnatic relationship, and describe its importance in Roman Law.*

A. Agnatics are all the Cognates who trace their connection exclusively through males. A table of Cognates is formed by taking each lineal ancestor in turn, and including all his descendants of both sexes in the tabular view; if then in tracing the various branches of such a genealogical tree we stop whenever we come to the name of a female, and pursue that particular branch no farther, all who remain after the descendants of women are excluded are Agnates. Further, we must add to the Agnates thus obtained, all persons, males and females, who have been brought into the family by adoption. Agnation is important, as it defined and limited the extent of the *Patria Potestas*. The foundation of agnation is not the marriage of father and mother, but the authority of the father. All persons are agnatically connected who are under the same paternal power, or who have been under it, or who would have been under it if their lineal ancestor had lived long enough to exercise his empire.

The paternal powers proper are extinguished by the death of the parent, but agnation is a mould which retains their imprint after they have ceased to exist.—Maine's Ancient Law, c. 5.

4. *Q. Explain the maxim per extraneam personam nihil adquiri posse.*

Was any exception ever allowed?

A. The rule of the older law was that no person could be represented *per extraneam personam, i.e.*, by a person who was not under his power, in any of those acts which were regulated by the civil law. Thus no one could acquire the ownership of a thing for another; if he received anything, as, for instance, by mancipation or in *jure cessio*, although he received it expressly for another, still this other person did not thereby acquire the property in the thing. But a mere natural fact, such as that of possession,

could take place for the benefit of one person through another person, if the person for whose benefit the thing was possessed had but the intention of profiting by it, and then this possession might lead through usucapion to ownership. If, however, a person was charged with the management of the affairs of another, he could exercise an intention of possessing for the benefit of the person for whom he acted, which a mere stranger could not; and thus it was possible *non solum scientibus sed etiam ignorantibus, i.e.*, for persons who did not know even of the fact of possession, to acquire legal possession through an agent. If the procurator received possession from a person who was the owner, then it was not a question of getting ownership by usucapion, and the ownership immediately passed to the person for whose benefit the thing was possessed.—Sandars' Justinian, p. 162.

5. *Q. By whom, and in what circumstances, might a testamentum inofficiosum be attacked?*

In what respects was the law altered by Justinian?

A. A testament was called *inofficiosum* which was at variance with the dictates of natural affection. Such a will was liable to be set aside on the application of the children, or if there were no children, on that of the ascendants, or if there were no ascendants, on that of the brothers and sisters of the deceased.

The claimant had to show that under the will he failed to obtain one-fourth part of his share on an intestacy, and that he could not get his rights in any other way; if, *e.g.*, being *praeteritus* he could get *bonorum possessio* from the praetor, the *querela* was not available.

The effect of the *querela*, if successful, was in the ordinary case to upset the will altogether, when, of course, the claimant got his share as on an intestacy. But it might, in exceptional cases, produce only a partial intestacy, *e.g.*, where there were several heirs, and the *querela* was only brought against one, or where there was a compromise.

Justinian altered the law, for he provided that the *querela* should only be brought where the claimant had received nothing at all under the will. If the claimant had received under it anything, however small, he could only bring an *actio ad supplendam legitimam* against the heir, which did not upset the will, but enabled the claimant to get what was left him made up to one-fourth of the share which he would have taken on an intestacy.

Also Justinian, by his eighteenth Novel, enacted that a testator with four children or less must leave them equally at least one-third of his estate; if he had more than four, he must leave them one-half.—Sandars' Justinian, 214; Leage's Roman Private Law, 189.

6. *Q. Explain the nature and the process of the mode of execution in bankruptcy called Bonorum Venditio. During what period was it in operation?*

What was the mode of execution in bankruptcy in the time of Justinian?

A. Venditio bonorum was a method of execution against the property of the debtor, devised by the *jus honorarium*. The Praetor, on the petition of the creditors or some of them, granted "*missio in bona*," *i.e*, made an order authorizing them to take possession of all the debtor's estate; after an interval of thirty days the creditors met to appoint a magister to conduct the sale, which at the end of ten days more took place by public auction, when the estate was sold to the highest bidder, who was bound to pay the other creditors the dividend he promised them by his bid, and who therefore became entitled in equity to the "*universitas juris*" of the debtor.

This mode of execution was in operation in the time of Gaius, who lived in the time of the Antonines.—Leage's Roman Private Law.

In the time of Justinian *manus injectio* and *venditio bonorum* were obsolete. In the case of ordinary execution (*i.e.*, where the debtor was not insolvent), the procedure was by sale and seizure and sale of part of the debtor's property under the order of the Court. When the execution was in bankruptcy, the procedure (unless the debtor made a voluntary *cessio bonorum*) was by *distractio bonorum*, which had displaced the *venditio bonorum*. The magistrate, on the application of the creditors, appointed a curator, who after an interval of two or four years sold the debtor's property in lots, the proceeds being divided up among the creditors. But even under this system the after-acquired property of the bankrupt could be seized by the creditors until they obtained payment in full.

7. *Q. Advise Titius in the following cases:*

(1) *Gaius carries off by force certain cattle belonging to Titius,*

(*a*) *well knowing that they belong to Titius,* (*b*) *honestly believing that they are his own.*

(2) *Gaius, practising with a javelin,* (*a*) *injures,* (*b*) *kills, one of the slaves of Titius.*

(3) *Gaius meets the wife of Titius attended by two slaves* (*a*) *in the Forum,* (*b*) *on an unfrequented road. He addresses both the lady and the slaves in abusive language, and he strikes one of the slaves.*

A. (1) (a) Titius has the *actio vi bonorum raptorum* against Gaius—he could recover the cattle or its value if Gaius has it no longer in his possession—and also three times the estimated value of the cattle; (b) under constitutions enacted by the emperors Valentinian, Theodosius and Arcadius, Gaius must not only restore the thing taken, but also pay its value.—Justinian, Lib. IV., Tit. ii.

(2) If Gaius was a soldier practising in the *Campus Martius,* or a place set apart for soldiers' practice, this did not imply negligence. But if he was not a soldier, he is liable under the second head of the *Lex Aquilia* to pay to (a) Titius the highest value the slave bore in the thirty days preceding the injury; and (b) if he killed the slave, under the first head of the *Lex Aquilia* he must pay the highest value the slave bore within the *year* preceding.

(3) Titius and also his wife have the *actio injuriarum* against Gaius, and her own father and the father of Titius have also an action if they are *in potestate.* The amount recoverable differed according to the rank of the person insulted. In the case of (a), as the insult occurred in the Forum, exemplary damages could be recovered; if, as in case (b), on an unfrequented road, this would not be so.

With regard to the slaves, the master could not bring an action for injury done to the slaves unless it was done to annoy the master. But the Praetor gave an action "*pleno jure.*" The slaves themselves could not bring an action.—Justinian's Institutes, Lib. IV., Tit. iv.

8. *Q. What was the position of the following persons with regard to contractual capacity—sons under power, pupils sui juris, slaves, married women, interdicted prodigals?*

A. Sons under power, so far as they had separate property, could bind themselves by contract. But if they had no such pro-

perty, the rule was that they could be sued personally upon their contracts, but they could not sue their debtors, inasmuch as the benefit, although not the burden, of their contracts accrued to their *pater familias*.

Pupils *sui juris* could better their condition by their contracts, but could not make it worse. This was in cases where they contracted without their tutors' *auctoritas*. In such contracts as create obligations to both contracting parties, *e.g.*, sale, if a tutor did not give his authority, those who contracted with the pupil were bound but he was not bound to them.

A slave could better his master's condition, but could not make it worse. Thus, the slave could act only in unilateral engagements, he could not buy or sell or make any other contract involving reciprocal duties between the parties. But the Praetor remedied this defect both in case of a slave and a *filius familias*, and gave an "*actio quod jussu*" where by his express authority the son or slave had made a contract with a third party.

Married women, if under their husband's *manus*, were in the position of children under power and their contractual disabilities were identical.

In the case of interdicted prodigals, as, for instance, where the administration of their affairs had been given to a curator, they could only contract through such curator.—Justinian's Institutes, Hunter's Introduction to Roman Law.

9. *Q. In what ways could suretyship, or indemnity, be created? A surety who was called upon to pay a debt, by obtaining beneficium cedendarum actionum, was subrogated to the rights of the creditor. Show how and in what circumstances this might be advantageous to him.*

A. Suretyship could be created by stipulation, by mandate, and by the *pactum de constituto*. The three forms of suretyship by stipulation were: *Sponsio, Fidepromissio*, and *Fidejussio*.

Mandate is a contract in which one person promises to do or to give something without remuneration at the request of another, who on his part undertakes to save him harmless from all loss. It might be for the benefit of the *mandans* or a third person, but not exclusively for the *mandatarius* himself. A *mandatum* required no special form, and might be made conditionally or to take effect at some future time.

Each surety was liable for the whole debt, and the creditor could

therefore demand it from any of the sureties he pleased; and before the time of Justinian there was no necessity for the creditor to sue the prinicpal debtor. Further, a surety called upon to pay the whole debt might avail himself of the *beneficium cedendarum actionum, i.e.*, he could require the creditor upon payment to hand over to him all his remedies, and thus have this advantage, that he would stand in the place of the creditor, and could sue the principal debtor for the amount paid, or the other sureties for their full share.

10. *Q. Advise Marcus:*

(1) *Gaius left to Marcus the legacy of a flock of sheep. On the death of Gaius, the flock was found to be (a) increased, (b) diminished, by ten sheep.*

(2) *Gaius bequeathed to Marcus "my slave Stichus." Gaius had two slaves of that name.*

(3) *Gaius bequeathed to Marcus "Stichus, the slave I bought from Seius." Gaius had a slave called Stichus, but he had bought Stichus from Maevius, not from Seius.*

A. (1) (a) An addition to the flock after the date of the will belongs to Marcus; (b) if the legacy is of a flock which afterwards is reduced, the legatee can claim it although diminished.

(2) Marcus can take one of the slaves, but not both.

(3) This is a case of "*Falsa demonstratio non nocet,*" and is a good legacy though the description is inaccurate.

CONSTITUTIONAL LAW (ENGLISH AND COLONIAL) AND LEGAL HISTORY.

1. *Q. Consider historically the expression "The High Court of Parliament."*

A. The expression "High Court of Parliament" is properly applied to Parliament when exercising, not legislative, but judicial functions. In early stages of political history the legislative and judicial functions of the sovereign power of the State are not clearly differentiated. Under the Norman and Angevin kings, both were exercised by the body vaguely termed the *Curia Regis.* From this body were developed in process of time the Superior Courts of Common Law, Parliament, the Court of Chancery and the King's Council, but the splitting up of the powers of the *Curia Regis* among these was a gradual process, and even after

the three Superior Courts of Common Law had developed out of the *Curia Regis* there remained a residuary judicial power in the Crown. This was in part exercised in Parliament, in part in Council, and in part in Chancery. Those who were dissatisfied with the decisions of the Courts petitioned the Crown in Parliament, alleging error. In the reign of Henry IV., the House of Commons requested to be relieved of the judicial business of Parliament, and since that time the jurisdiction to hear appeals has been exercised by the House of Lords alone. In the year 1675, in the case of *Shirley* v. *Fagg*, the House of Lords assumed jurisdiction to hear appeals from Chancery also, and though the jurisdiction was contested it became established. Since 1830, lay members of the House have ceased to take part in its proceedings when sitting as a Court of law, and since the Appellate Jurisdiction Act, 1876, its functions as such have been placed on a statutory basis. But this is not the only aspect of the judicial functions of Parliament. Each House has jurisdiction over its own members and over the general public in respect of a contempt against itself. The House of Lords also has jurisdiction (derived from the 39th section of Magna Charta) to try its own members on charges of treason or felony. It had, until the reign of Richard II., jurisdiction to try great offenders who were too powerful to be reached by the ordinary Courts, but this power was taken away by statute in that reign, and became vested in the Council, yet the House still has jurisdiction to try great offenders impeached by the House of Commons, though this also has become obsolete in modern times. Finally, both Houses have at different times made claim to jurisdiction as Courts of First Instance, the House of Lords in 1667, in *Skinner* v. *The East India Co.*, and the House of Commons in several instances, the last of which was that of *Mist*, in 1721, but neither succeeded in maintaining its claim.

2. *Q. What was and is the legal position of an alien resident in the United Kingdom? How far has the Crown or the executive of a self-governing Dominion power to exclude, expel, or deport aliens?*

A. At the common law aliens possessed no political rights, could not hold real property, could not lease land for more than twenty-one years, and were debarred from ownership of British ships.

By the Naturalization Act, 1870, an alien can acquire, hold and dispose of all property, real or personal, in the same manner as a natural born British subject, except that he cannot own a British ship or shares therein. (See Merchant Shipping Act, 1894.) But an alien enjoys no political rights. He cannot vote at a parliamentary or municipal election, nor is he qualified to hold any office.

The case of *Musgrove* v. *Chan Teeong Toy*, (1891) A. C. 272, shows that at common law an alien has no legal right, enforceable by action, to enter British territory; but, on the other hand, the Crown appears to have no right at common law to expel an alien who has once entered British dominions. The right has, however, been in some cases, and under certain conditions, conferred by statutes, such as the Extradition Acts and the Prevention of Crime Act, 1882. Further, it is now provided by the Aliens Act, 1905, that leave to immigrants to land may be refused by an Immigrant Board on certain grounds. The Act further empowers a Secretary of State to make an expulsion order of criminals and "undesirables" in certain specified cases.

3. *Q. Explain the methods by which the Courts of King's Bench and Exchequer obtained jurisdiction over common pleas.*

A. These two Courts extended their jurisdiction at the expense of the Court of Common Pleas, and attracted to themselves matters that properly fell within the jurisdiction of the latter Court by means of legal fictions. The King's Bench, having no jurisdiction over purely civil matters, issued a Bill of Middlesex, directed to the Sheriff of Middlesex, falsely charging defendant with a trespass *vi et armis*, which was a cause of action for which he might be arrested by the King's Marshal, and custody of the Marshal brought defendant within the jurisdiction of the King's Bench. If defendant lived elsewhere than Middlesex, the Sheriff made a return *non est inventus* to the bill, and a writ of *latitat* issued to the Sheriff of the county where defendant was, which, after reciting the Bill of Middlesex and the return made thereto, and that the defendant *latitat et discurrit* (lurks and runs about) such other county, commanded the Sheriff of that county to take him, similarly conferring jurisdiction by the fiction of custody of the Marshal.

The Court of Exchequer employed the writ of *Quominus*, by which the plaintiff alleged that he was debtor to the King

and that the defendant had done him an injury *quo minus sufficiens existit* (by reason whereof he was the less able) to pay the King's debt. This assertion of indebtedness to the King, which was not allowed to be contested, constituted the case a matter affecting the revenue and so within the jurisdiction of the Court of Exchequer.

4. *Q. Compare the scope of the royal prerogative as regards legislative and judicial authority* (1) *in Protectorates;* (2) *in conquered or ceded colonies;* (3) *in settled colonies;* (4) *in self-governing Dominions.*

A. As regards legislative authority—(1) In Protectorates the powers of the Crown depend on the Foreign Jurisdiction Act, 1890, which gives the same powers as exist in colonies acquired by conquest or cession. (2) In the latter, the Crown, by virtue of common law prerogative, exercises full legislative authority by Order in Council, but the power is lost when once representative institutions have been granted to the colony. (3) In colonies acquired by settlement, the Crown has no legislative power by Order in Council, except so far as it is conferred by the British Settlements Act, 1887. (4) In the self-governing Dominions the Crown has no legislative power by Order in Council.

As regards judicial authority—(1) In Protectorates no limitations exist to the powers of the Crown, and provision is made by proclamation for the administration of justice in whatever manner circumstances may require. (2) The powers of the Crown are not very precisely defined in the case of colonies acquired by conquest or cession. (3) and (4) In settled colonies the Crown can perhaps make provision for the administration of the common law by Order in Council or Letters Patent, but, except by statutory authority, cannot create a Court for any other purpose. In those colonies which possess a legislature, the matter is governed by the Colonial Laws Validity Act, 1865.

5. *Q. What position have the Privy Council or its committees held in the English judicial system at different periods?*

A. When, under the Angevin kings, the judicial functions of the *Curia Regis* split off from the rest and became vested in the Courts of King's Bench, Common Pleas and Exchequer, there remained a residuary royal jurisdiction which came in part to

be exercised by the Crown in Parliament and in part by the Crown in Council. That exercised by the Council was itself of two kinds: (1) original, and (2) appellate. The original jurisdiction was in part criminal, which was exercised by the Committee of the Council known as the Star Chamber, and in part civil, which eventually developed into (a) the equitable jurisdiction of the Chancellor, and (b) the jurisdiction exercised by the Court of Requests. The Courts of Star Chamber and Requests having been abolished in the seventeenth century and that of the Court of Chancery having become an entirely distinct jurisdiction, there remained only the appellate jurisdiction of the Council, which was exercised in favour of suitors who could not obtain justice in any of the dependencies of the Crown, such as the Channel Islands, the Isle of Man, and, in later times, of the Colonies. In 1832 appeals in Ecclesiastical and Admiralty matters were referred to the Crown in Council, and in 1833 was constituted the Judicial Committee of the Privy Council to which the existing jurisdiction was transferred. The powers of the Judicial Committee have since this statute been restricted to some extent by the Judicature Acts and the Appellate Jurisdiction Acts, which transferred Admiralty appeals to the House of Lords, and by the provisions of the Commonwealth of Australia Act and the Union of South Africa Act, which have limited the right of appeal in certain cases. A proposal is now before Parliament to merge the jurisdictions of the House of Lords and the Judicial Committee of the Privy Council in a new Imperial Court of Appeal.

6. *Q. Consider the effect of the Parliament Act,* 1911, *upon the British Constitution. How do the Constitutions of the Commonwealth of Australia and the Union of South Africa deal with conflicts between the two Houses of Legislature?*

A. Shortly, the effect of the Parliament Act, 1911, is to reduce the rights of the Lords in the matter of finance to brief and formal discussion, money bills sent up at least a month before the end of the Session being presented for the Royal assent at the end of a month after being sent to the Lords, whether they have received the Royal assent or no. In matters of general legislation, any bill (other than a bill extending the duration of Parliament), which has passed the Commons in three successive sessions, and been thrice rejected by the Lords, provided two years have elapsed between the second reading on the first occasion and the third

reading on the third occasion also passes without the Lords' consent. In the view of many writers this vests the sovereign power in the Crown and Commons to the exclusion of the Lords.—See "Law Notes," vol. xxx., p. 310. Anson, vol. i., p. 11.

By the Commonwealth of Australia Constitution Act, 1900, in case of difference between the two Houses, provision is made for a joint sitting, and if the proposed law is affirmed by an absolute majority of the total number of the members of both Houses, it shall be taken to have been duly passed by both, and shall be presented to the Governor-General for the Royal assent. There is a similar provision in the South Africa Act, 1909.

7. *Q. Give an account of the origin and early history of trial by jury.*

A. The origin of trial by jury is very obscure, and is the subject of many conflicting theories. The majority of modern writers on the subject seem to regard it as derived from the Inquest by Sworn Recognitors, which seems to have been an importation from Normandy; at any rate, it appears in England for the first time subsequently to and shortly after the Norman Conquest. In its developed form, however, trial by jury is distinctly and exclusively an English institution. In criminal proceedings the matter is complicated by the existence of the grand jury or jury of presentment (of which traces exist even before the Conquest, and which may therefore possess a purely indigenous origin), as well as the petty or trial jury. In civil proceedings the sworn inquest seems at first to have been chiefly employed in matters not strictly judicial, such as the ascertainment of the laws of Edward the Confessor, the Domesday Survey, the assessment of feudal taxation under William Rufus and Henry I., and the like. The use of a jury both for criminal presentment and civil inquest is mentioned for the first time in our statute law in the Constitutions of Clarendon (A.D. 1164). In the reign of Henry II. the system of inquests was applied to the grand and petty "assizes." By the grand assize the defendant was allowed his choice between wager of battle and the recognition (*i.e.*, the knowledge) of a jury of twelve sworn knights of the vicinage summoned for that purpose by the sheriff; in the petty assizes the sheriff himself chose twelve knights or freeholders (*legales homines*) of the vicinage, who were sworn to try the question. The jury in these cases decided on their own

knowledge; they were witnesses; if all were ignorant of the facts a fresh jury had to be summoned, if some only were ignorant others had to be added—a process subsequently termed "afforcing" the jury.

The Assize of Clarendon also applied the principle of recognition by jury to criminal proceedings, reconstituting or reviving in an expanded form the institution analogous to a grand jury which had existed since the time of Ethelred II., and by the Articles of Visitation in the reign of Richard I. the constitution of this jury of presentment was assimilated to the system already in use for nominating the recognitors of assize. This jury did not finally determine the guilt of the accused; that had to be done by ordeal or one of the other methods of ascertaining guilt or innocence then known to the law, but after the abolition of trial by ordeal by the fourth Lateran Council in 1215, the practice (which had already been initiated) gradually grew up of allowing a second or petit jury to affirm or traverse the testimony of the first inquest men or grand jury; but a prisoner could not be tried by a petty jury unless he consented to "put himself on his country," which led to the practice of coercing him into pleading by the barbarous proceeding called *peine forte et dure*, which was only abolished in 1772 by the 12 Geo. 3, c. 20.

It is impossible to set out all the steps by which the jury gradually became converted from recognitors or witnesses into the modern jury who found their determination of the issue upon the evidence, oral or written, adduced before them. It was a slow process, the beginnings of which can be traced as far back as the reign of Edward III., and which was not completed until the reign of George I.—See Taswell-Langmead, Constitutional History, 7th ed., 129 *et seq.*

8. *Q. On what tenure do the civil and military servants of the Crown hold office?*

A. Generally servants of the Crown hold office during the Royal pleasure, though certain civil servants hold office during good behaviour. Thus the judges of the Supreme Court hold office during good behaviour, subject to removal on an address by both Houses.

9. *Q. To what extent is judicial immunity recognized by the law?*

A. The judges enjoy full immunity for any acts done or words

spoken in a judicial capacity in a Court of Justice.—*Scott* v. *Stanfield*, L. R. 3 Ex. 220; *Anderson* v. *Gorrie*, (1895) 1 Q. B. 668.

10. *Q. Give a short history of actions for the recovery of land.*

A. In the Norman and Angevin period the procedure to recover land was by one of the real actions, of which there were five: writ of right, writ of entry, assize of mort d'ancestor, assize of novel disseisin, and assize of darrein presentment. In these the plaintiff claimed the land itself, and not merely damages for dispossession, but they were only available to a freeholder. The leaseholder could in the earliest times only recover damages if he were dispossessed. But about the time of Bracton the leaseholder was granted a writ for forcible ejectment, upon which, although the action was in form personal, the Court could order the wrongdoer to give up the land. The procedure in this action was found so much quicker and less expensive than the real actions, that by various fictions during the sixteenth and seventeenth centuries it became extended to freeholders, and the real actions fell into disuse. Finally, the Common Law Procedure Act, 1852, abolished both the real actions and the fictions upon which the action of ejectment was based, and allowed an action for the recovery of land to be brought by an ordinary writ.

CRIMINAL LAW AND PROCEDURE.

1. *Q. What is an indictment? In what cases, and subject to what conditions, can Justices of the Peace try an adult who is charged with an indictable offence?*

A. A written accusation of a person or persons of a crime preferred to and presented on oath by a grand jury; it is divided into three parts: (i.) the commencement; (ii.) the statement; and (iii.) the conclusion. By the Summary Jurisdiction Acts, 1879—1899, adults can be tried summarily by the justices in the following cases:—(i.) simple larceny; (ii.) offences punishable as simple larceny; (iii.) larceny from the person; (iv.) larceny by a clerk or servant; (v.) embezzlement by a clerk or servant; (vi.) receiving stolen goods; (vii.) aiding and abetting (a), (b), (c) or (d); (viii.) attempting (a), (b), (c) or (d); (ix.) false pretences; (x.) malicious damage to woods under sect. 16 of the Malicious Damage Act, 1861; (xi.) an indecent assault on a child under sixteen (Children Act, 1908, s. 128). The conditions are:—

(1) The justices must be sitting in Petty Sessions in a Petty Sessional Court House; (2) the offender must be sixteen or more; (3) the justices must consider it expedient to deal with the case summarily; (4) the offender must not, by reason of a previous conviction on indictment, be punishable by penal servitude; (5) if charged with false pretences, the Court must explain the nature of the crime; (6) the property must not exceed 40*s.* in value (except in the case of attempts to commit the specified larcenies); (7) the charge must be reduced to writing and read over to the offender; he must be informed of his right to be tried by jury and consent to be tried summarily. If the property exceeds 40*s.*, (1) the justices must be satisfied that (a) the evidence is sufficient to put the offender on his trial, (b) that the case is one which may be properly dealt with summarily, and (c) may be adequately punished on summary conviction; (2) the charge must be reduced into writing and read over to the offender; (3) the offender must be warned that he is not bound to say anything, &c., and that he has the right to be tried by jury; (4) the offender must plead guilty.—Student's Criminal and Magisterial Law, pp. 192, 309.

2. *Q. Explain the terms—*

(*a*) *Arson.*

(*b*) *Maintenance.*

(*c*) *Misprision of Treason.*

A. (a) The crime of unlawfully and maliciously setting fire to a church or a chapel, a mine, a ship, or some building. (b) The officious meddling in a suit which in no way concerns one by assisting a party thereto in his suit with money or otherwise. (c) The bare knowledge and concealment of treason.—Student's Criminal and Magisterial Law, pp. 140, 48, and 24.

3. *Q. A. employed a contractor, B., to paint his house inside and out. One of B.'s workmen, C., stole 4l. from a drawer in A.'s house. A. at first declined to prosecute; so B. declared that he would prosecute C. C.'s relatives thereupon offered to give B. 10l. not to prosecute C. B. accepted the 10l., and promised not to prosecute. Subsequently A. prosecuted C. and he was convicted.*

Has B. committed any and what offence?

A. B. has committed the common law misdemeanour of com-

pounding a felony. It is immaterial that he was not owner of the property stolen.—*R.* v. *Burgess*, 16 Q. B. D. 141; Student's Criminal and Magisterial Law, p. 46.

4. *Q. D. lighted his pipe while walking down the street and flung the match, still burning, into an open barrel which was just inside the door of E.'s shop. The barrel had contained petroleum, and a little was still left at the bottom of it; D. did not know this. E.'s shop was set on fire and one of his children was burnt so severely that he died.*

Has D. caused the death of E.'s child? If so, of what crime is he guilty?

A. D. has caused the death of E.'s child, but is not guilty of manslaughter, for negligence, to create criminal responsibility, must be so gross as to amount to recklessness; mere inadvertence, which may create a civil liability, will not create criminal liability. —*R.* v. *Noakes*, 4 F. & F. 920; *R.* v. *Franklin*, 15 Cox, 163.

5. *Q. There were two brothers, F. and G., and two sisters, H. and J. F. married H. and G. married J. Then F. and J. died, and subsequently G. married H.*

Will G. be guilty of any crime if, in the lifetime of H., he goes through a form of marriage with another lady?

A. G. will not be guilty of any crime. The marriage with his brother's widow was invalid (the Deceased Wife's Sister's Marriage Act, 1907, not touching the case), and G. had no legal wife living at the time he married the other lady, so that he did not commit bigamy.—Offences against the Person Act, 1861.

6. *Q. What criminal offence, if any, is committed in each of the following cases?*

(*a*) *The parents of a sick child are very poor and cannot afford to supply him with sufficient nourishment of a suitable kind. For want of such nourishment the child dies.*

(*b*) *A postman, being unable to find the person to whom a letter is addressed, puts it into his pocket, intending to appropriate the contents.*

(*c*) *An attempt having been made abroad to assassinate the Sovereign of a foreign country, an English newspaper publishes an article extolling the attempt and representing the assassin as a hero.*

A. (a) Manslaughter. Sect. 12 (1) of the Children Act, 1908, provides that neglect to provide for the maintenance of a child is not excused by inability to do so without resort to the poor law. So that poverty is no excuse for the neglect.

(b) An offence under sect. 55 of the Post Office Act, 1908, making it a felony punishable with seven years' imprisonment as a maximum for a Post Office official to steal any postal packet in course of transmission by post.—*R.* v. *Poynton*, 32 L. J. (M. C.) 29.

(c) Encouraging and endeavouring to persuade to murder within the meaning of sect. 4 of the Offences against the Person Act, 1861.—*Reg.* v. *Most*, 7 Q. B. 244.

7. *Q. K.'s cook left his kitchen window unfastened and the lower sash raised one inch. At* 11.30 *p.m. L. lifted the lower sash with the intention of entering the kitchen and stealing what he could find there; but he had only got one leg over the sill when he was seized from outside by a policeman.*

What crime has L. committed?

Draft the appropriate indictment.

A. This is not burglary as there is no breaking. (*Reg.* v. *Smith*, 1 Mood. 178.) He is guilty of entering a house in the night time with intent to commit a felony. (Larceny Act, 1861, s. 54.) The material part of the indictment will be that L. on the date in question "the dwelling-house of K., situate at, &c., feloniously did enter with intent to commit a felony therein, to wit, the goods and chattels of one K. in the said dwelling-house then being feloniously to steal, take, and carry away against the form of the statute, &c."

8. *Q. What defences besides the plea of "Not guilty" can be raised by a prisoner on arraignment?*

A. (i.) A plea to the jurisdiction. (ii.) A plea in abatement. (iii.) Demurrer. (iv.) *Autrefois acquit.* (v.) *Autrefois convict.* (vi.) Pardon. (vii.) If he is indicted for libel, Libel Act, 1843, s. 6.—Student's Criminal and Magisterial Law, p. 222.

9. *Q. What different kinds of punishment or punitive treatment can now be imposed on an infant under the age of fourteen?*

A. By the Summary Jurisdiction Acts, 1879—1899, two justices

can impose a fine not exceeding 40*s*., and if a male, private whipping not exceeding six strokes. By the Probation of Offenders Act, 1907, they can release him on probation. By the Children Act, 1908, a child under fourteen can in certain cases be sent by two justices to a certified industrial school until he attains the age of sixteen.—Student's Criminal and Magisterial Law, pp. 293, 297, 307.

10. *Q. Goods stolen from M. were found in N.'s house; and N. was indicted for receiving them, knowing them to have been stolen by O. At the trial, N. was defended by counsel. N. went into the witness-box and gave evidence on oath accusing M. of having placed those goods in his (N.'s) house out of deliberate malice, in order to found a criminal charge against him. N.'s counsel also called O. as a witness.*

State the order of the proceedings at the trial.

Can the counsel for the prosecution cross-examine either N. or O. with the object of proving that he is of bad character?

A. At the close of the case for the prosecution O. and the prisoner will give their evidence, counsel for the defence will open his case and address the jury, and then counsel for the prosecution will exercise his right of reply. (Criminal Procedure Act, 1865, s. 2; Criminal Evidence Act, 1898, s. 3.) O. can be cross-examined with a view to proving him of bad character, since this goes to credit, and N. can be similarly cross-examined, since the "nature or conduct of the defence is such as to involve imputations on the character of the prosecutor" within sect. 1 of the Criminal Evidence Act, 1898.—*R.* v. *Marshall*, 63 J. P. 36.

THE LAW OF REAL PROPERTY AND CONVEYANCING.

1. *Q. Explain fully the following statement:—"Corporeal hereditaments were formerly transferable by feoffment with livery of seisin."*

A. Formerly corporeal hereditaments could only be conveyed by means of a gift of the freehold estate accompanied by actual delivery of possession. Since the Real Property Act, 1845, corporeal hereditaments can be conveyed by deed of grant.

2. *Q. Certain lands were granted to A. and the heirs male of*

his body. Other lands were granted to B. for life with remainder to B.'s eldest son and the heirs male of his body. Describe and contrast the way in which A. and B. respectively can deal with the fee simple.

A. A. being tenant in tail can disentail and acquire the fee simple under the provisions of the Fines and Recoveries Act, 1833, or he can sell the fee simple as tenant for life under the Settled Land Acts by virtue of sect. 58 of the Settled Land Act, 1882. In the former case he can dispose of the property for his own benefit, in the latter he can only do so as trustee for all parties concerned, and the purchase-money must be paid to the trustees of the settlement or into Court and the requirements of the Acts observed. B. being tenant for life can only deal with the fee simple under the powers conferred by the Settled Land Acts above referred to.

3. *Q. Show how long terms of years are usually employed in settlements of land, and how such terms usually come to an end.*

A. A long term of years is usually vested in trustees, prior to the estate in tail male given to the eldest son, by way of securing payment of the portions for the younger children, and powers are given to the trustees to deal with the term for the purpose of raising the portions. On payment of the portions the term ceases to exist by virtue of the Satisfied Terms Act, 1845.

4. *Q. D. has agreed to sell certain freehold land to your client. The abstract of title shows the following:—*

1st May, 1880. *Deed by which A. conveyed the land to B. and C. and their heirs to the use of A. for life, with remainder to the use of B. and C. for* 500 *years upon trusts for raising* 5,000*l. for the younger children of A., with remainder to the use of the eldest son of A. and the heirs of his body.*

2nd June, 1903. *Deed by which, after reciting that D. is the only son of A., A. (as to his life estate) and D. with the consent of A. conveyed the land to E. and his heirs discharged from D.'s estate tail to such uses as A. and D. should by deed jointly appoint.*

3rd June, 1903. *Deed by which A. and D. appointed the land to the use of A. for life, with remainder to the use of D. for*

life, with remainder to the use of E. and F. for 500 *years, with remainder to the use of the eldest son of D. in tail.*

2nd April, 1907. *Death of A.*

What requisitions on title should be made?

A. Assuming that the contract is an open one, the purchaser is entitled to a conveyance of the fee simple, and as D. is only tenant for life he can only sell the fee by virtue of the Settled Land Acts, and a requisition will have to be made whether the purchase-money is to be paid to the trustees, and if so, that they must be made parties to the conveyance to give a discharge for the purchase-money, or into Court. Again, the purchaser is entitled to a title going back forty years before the date of the contract (Vendor and Purchaser Act, 1874), and requisition should be made requiring the title to be shown prior to the 1st May, 1880, for a sufficient period to make up this forty years. A requisition should also be made requiring production of a certificate that the succession and estate duty payable on the death of A. has been discharged, and a requisition should be directed to establish the fact that there was no child of A. other than D.

5. *Q. Explain, with examples, what is meant by "a good root of title."*

A. A good root of title is a document dealing with or proving on the face of it without the aid of extrinsic evidence the ownership of the whole legal and equitable estate in the property sold, containing a description by which the property can be identified, and showing nothing to cast any doubt on the title of the disposing parties. A conveyance in fee on a sale, or by way of mortgage, is a good root of title, but a general devise in a will is not, nor is a conveyance of an equity of redemption.—See Williams, Vendor and Purchaser, 2nd ed., 106.

6. *Q. By the effect of a deed made in* 1860 *land was granted to A. for life with remainder to the first son of A. who should attain* 21 *in tail, remainder to B. for life, remainder to the first son of B. who should attain* 21 *in tail.*

In 1870 *A. died leaving his eldest son aged* 18, *who took possession of the land and remained in possession until* 1894, *when he purported to bar the entail and sell the land to a purchaser.*

B. died in 1907 *leaving a son aged* 40. *Who is now entitled to*

the land? Consider the effect of the Real Property Limitation Act, 1874.

A. Even though A.'s son has not effectually barred the entail, the purchaser from A.'s son is yet entitled to the land, for the Real Property Limitation Act provides that the rights of the tenant in tail being barred, the rights of persons whom he could lawfully have barred are also at an end.

7. *Q. Show how the rules as to the devolution of copyholds on the death of the person in whom they are vested differ from the rules which apply to freeholds.*

A. The legal estate of freeholds vests in the executor or administrator, whereas in copyholds it still vests in the heir (Land Transfer Act, 1897, s. 1), and the beneficial interest of freeholds descends on intestacy to the heir as ascertained by the common law and the Inheritance Act, 1833, while the beneficial interest in copyholds descends to the heir as ascertained by the custom of the manor.

8. *Q. What are the essential parts of a legal sub-mortgage of a mortgage in fee of freeholds? Explain the statement that a sub-mortgagee has usually two distinct powers of sale.*

A. The essential parts of the sub-mortgage are the assignment of the mortgagor's covenant for repayment and the conveyance of the legal estate. The sub-mortgagee has a double right of sale in that he can exercise the power of sale implied in his own mortgage and transfer the mortgage security, or can exercise the power of sale in respect of the land comprised in the mortgage, and sell that land free from any right of redemption by the original mortgagor.

9. *Q. What powers of leasing the mortgaged land have the mortgagor and mortgagee respectively* (1) *apart from statute,* (2) *by statute?*

A. Apart from statute, unless expressly authorized by the mortgage deed, neither mortgagor nor mortgagee can make leases binding upon the other. Under sect. 18 of the Conveyancing Act, 1881, unless there is a contrary agreement in writing, either mortgagor or mortgagee, if in possession, can make the leases specified in the section, which will be binding as against the other. By sect. 3 of the Conveyancing Act, 1911, this power

of leasing is vested in the mortgagee though not in possession, if he has appointed a receiver and the receiver is acting.

10. *Q. A. made his will in* 1905 *devising Blackacre and Whiteacre to B. and his heirs, and devising and bequeathing his residuary estate real and personal to C. A. was then mortgagee of Blackacre and tenant in fee simple of Whiteacre. In* 1910 *A. purchased the equity of redemption in Blackacre, and in December,* 1911, *agreed to sell Whiteacre to D. for* 1,000*l. A. died in January,* 1912, *before the sale of Whiteacre was completed. Advise B. and C. as to their rights.*

A. C. should be advised that he is entitled to Blackacre (*Yardley* v. *Holland*, 20 Eq. 428), and that he is further entitled to the proceeds of sale of Whiteacre, which is converted as from the date of the contract. B. takes nothing.

LAW AND EQUITY.

First Paper.—Common Law.

1. *Q.* "*Contracts with minors, lunatics and married women are absolutely void.*"

Is this an accurate statement of the law?

A. (i.) As to infants, this is not an accurate statement, for a contract with an infant for necessaries is not void, neither are certain contracts for the benefit of an infant. The Infants Relief Act, 1874, makes only three contracts void, viz.: (a) for repayment of money lent; (b) for goods supplied other than necessaries; or (c) accounts stated. Other contracts are voidable, and the Infants Relief Act, 1874, provides, in effect, that those which at common law needed ratification cannot be ratified even on a fresh consideration. Certain voidable contracts, however, become at common law binding on an infant if he does not expressly repudiate them within a reasonable time after attaining full age.

(ii.) A contract with a lunatic is not absolutely void, on the contrary it is good unless his committee or guardian *ad litem* can prove that at the time of making the contract he did not understand what he was doing and that the other party knew that he was in this mental state. (*Imperial Loan Co.* v. *Stone*, (1892) 1 Q. B. 599.) If he succeeds in proving both these points the contract is not void but voidable at his option.

(iii.) At common law the contracts of married women, with few exceptions, *e.g.*, contracts as to her personal services, and agreements to live apart from her husband, were void, but equity conferred contractual capacity on married women as to separate estate, and this has been extended by statute law, *i.e.*, the Matrimonial Causes Act, 1857, and the Married Women's Property Acts, 1870, 1874 and 1882; and now, by the Married Women's Property Act, 1893, a married woman possesses contractual capacity although at the date of the contract she possessed no separate estate.

2. *Q. What implied warranties are there on the part of A. where—*

(*a*) *A., an ironmonger, sells a pair of scissors to B., a dressmaker?*

(*b*) *A., a shipowner, requests C., an underwriter, to insure A.'s ship?*

(*c*) *A., an undergraduate, pledges his watch with D., a pawnbroker?*

A. (a) There are implied a condition for good title and warranties for quiet enjoyment and freedom from incumbrances. Further, if the circumstances show that B. relied on A.'s skill and judgment, an implied condition that the scissors are fit for the purpose for which supplied.—Sale of Goods Act, 1893, ss. 12. 14.

(b) There is an implied warranty in a voyage policy that the ship is seaworthy for the purposes of the particular adventure at the commencement of the voyage, and if she is in port that she shall at the commencement of the risk be reasonably fit to encounter the ordinary perils of the port, and if the voyage is by stages that she shall be seaworthy at the commencement of each stage. In all policies there is implied a warranty that the adventure is legal and to be carried out in a legal manner.—Sects. 39, 41, Marine Insurance Act, 1906.

(c) That he has a good title to pledge the goods.

3. *Q. The parties to a contract agree that a specific sum shall be recoverable for a breach of the contract. State shortly the leading rules which you would apply in order to ascertain whether such sum is to be regarded as a penalty or liquidated damages.*

A. (i.) The specific sum is a penalty if it is to become pay-

able on non-payment of a sum of money less than that specific sum.—*Kemble* v. *Farren*, 6 Bing. 141.

(ii.) Where the specific sum is payable on breach of only one stipulation, it is *primâ facie* liquidated damages.

(iii.) But if payable on breach of any one of several terms of varying importance it is *primâ facie* a penalty.—*Wallis* v. *Smith*, 21 Ch. D. 243; and see *Pye* v. *British Automobile Commercial Syndicate*, (1906) 1 K. B. 425.

4. *Q. B. tells C., a police constable, that his purse has been stolen, and that he suspects D. C. thereupon arrests D. and takes him to the police station, where D. is locked up all night. On the following morning D. is brought before a magistrate, when B. appears and says that he has found his purse, which had been mislaid. D. is discharged. Has D. any, and if so what, remedy and against whom?*

A. Assuming that B. signed the charge sheet, D. can sue B. for damages for malicious prosecution if he can show that he suffered damage and that B. acted maliciously and without reasonable and probable cause. He cannot sue either B. or C. for false imprisonment, because he has suffered no imprisonment at the hands of B., and because C., being a police constable, was justified in arresting without a warrant upon reasonable suspicion that a felony had been committed and that D. was the felon.—Odgers' Common Law, 473, 541.

5. *Explain what is meant by the defence of fair comment in an action of libel.*

State shortly in what cases it is applicable, and distinguish it from justification and qualified privilege.

A. Fair comment as a defence means that the alleged libel was comment on a matter of public interest, or a matter which, although of no intrinsic public interest, has been submitted to criticism by the persons concerned. It need not be shewn that the comment is fair in the sense of being accurate and just, provided it does not go beyond the expression of the writer's honest opinion. If made out it is a defence as negativing the libel and shewing that the statement made was not defamatory, whereas justification admits the libel, but justifies it on the score of truth, while the defence of privilege also admits the libel but justifies it by reason of the occasion of publication. (*McQuire* v. *Western*

Morning News, (1903) 2 K. B. 100; see also, however, *Thomas* v. *Bradbury*, (1906) 2 K. B. 627, where a tendency is shown to treat fair comment as a case of qualified privilege.)—Odgers' Common Law, 521.

6. *Q. Can E. sue the executors of F. deceased if before his death—*

(*a*) *F. has broken his contract with E. to supply E. with* 10,000 *tons of coal?*

(*b*) *F. has libelled E.?*

(*c*) *F. has stolen twenty* 5*l. notes out of E.'s desk?*

A. (a) Yes, this is not an action to which the maxim *Actio personalis moritur cum persona* applies.

(b) No, the maxim applies, and the cause of action ceases with the death of either party.

(c) Yes, by virtue of s. 2 of the Civil Procedure Act, 1833.

7. *Q. A painter who has been continuously employed by a builder for several years at a fixed rate of wages* (30*s. a week*) *whilst coming down from his work steps on a rotten rung of a ladder, falls and suffers internal injuries. He is unable to work for twelve weeks. He is able to return to work at the end of that time and earn the same wages as before, but continues to suffer pain and will never completely recover. His doctor's bill amounts to* 10*l.*

Has he a remedy, and if so what must he prove—

(*a*) *in an action against his master at common law?*

(*b*) *in an action under the Employers' Liability Act,* 1880?

(*c*) *if he makes a claim under the Workmen's Compensation Act?*

What are the relative advantages of each course?

A. A remedy may exist under all three heads.

(a) He must prove that the master has not taken reasonable care to provide appliances and to maintain them in a proper condition so as not to subject the servant to unnecessary risk.—*Smith* v. *Baker*, (1891) A. C. 325.

(b) That the defect in the ladder was a defect arising or not discovered owing to the master's negligence, or the negligence of a person in the master's service entrusted with the duty of seeing that the ladder was in proper condition.—Employers' Liability Act, s. 1, cl. 2.

(c) That the accident was one arising out of and in the course of his employment.

The advantage of course (a) is that the action may be brought in the High Court, while in (b) it must be brought in the County Court, while in (c) no action lies, but compensation must be fixed in accordance with the provisions of the Workmen's Compensation Act, 1906, and the amount of the damages is not restricted, as it is in cases (b) and (c); of (b) that it is not necessary to prove personal negligence of the employer, negligence of a deputy suffices, and that the damages recoverable, though restricted, are larger than the compensation obtainable under (c); and of (c) that no negligence need be proved on the part of anyone, and (except to a practically negligible extent) it will not be open to the master to suggest that he has contracted out of liability as it is open in (a) and (b). A further advantage of (a) and (b) is that any sum recovered will be payable in a lump, and of (c) that the defence of contributory negligence is not available.

8. *Q. G. orders goods of H. and requests H. to send them by railway from Newcastle addressed to G. at Exeter, carriage to be paid by G. H. hands the goods to the J. Railway Company at Newcastle with directions to forward them to G. The goods are carried by the J. Railway Company, the K. Railway Company and the L. Railway Company, the last of which delivers them to G. The goods are damaged by rain owing to the negligence of the servants of the K. Railway Company. Advise—*

(*a*) *against which of the companies an action will lie.*

(*b*) *whether G. or H. should be plaintiff.*

Which company would you sue if you had no information as to how or where the damage occurred?

A. An action will lie either against the J Railway Company on contract (unless that railway has protected itself by express stipulation, which need not comply with the Railway and Canal Traffic Act, 1854 (see *Zunz* v. *S. E. Rail. Co.*, 4 Q. B. 539)), or the K Railway Company in tort, and G. should be plaintiff, as being the owner of the goods and the person with whom the contract of carriage was made. (*Foulkes* v. *Metropolitan District Rail. Co.*, 4 C. P. D. 267; affirmed on appeal, 5 C. P. D. 157.) Unless it is clear that the damage was occasioned by the negligence of railway K, the action should be brought against railway J, for

in the action on contract it will only be necessary to prove the damage, and not the circumstances under which it occurred.

9. *M. enters the employment of N., a retail greengrocer in a small town (O.), and agrees that for two years after leaving N.'s service he will not on his own account or as a servant be engaged in the business of a greengrocer or any other business in the town of O. or within 200 miles thereof.*

Can N. obtain an injunction restraining M. from setting up within two years after leaving N.'s service—

(a) as an ironmonger in O., or

(b) as a greengrocer in O., or

(c) as a greengrocer one mile from O.?

Would it make any difference if N. had wrongfully dismissed M.?

A. No injunction can be obtained in cases (a) and (c), since the covenant is illegal as being in restraint of trade, for the restraint is obviously wider than is reasonably necessary for the protection of the other party. (*Nordenfelt* v. *Maxim-Nordenfelt Gun Co.*, (1894) A. C. 535.) But as the agreement is severable, an injunction could be obtained in case (b) (*Mallan* v. *May*, 11 M. & W. 633), unless N. had wrongfully dismissed M.—*General Bill-Posting Co.* v. *Atkinson*, (1909) A. C. 118.

10. *Q. What must a plaintiff prove in an action for enticing away a servant?*

Will an action lie in each of the following cases?—

(a) P.'s niece lives with him and keeps house for him, but receives no wages and is not bound by contract to serve him. Q. induces her to run away and live with him. She does so, but returns to P. after a few days and continues to keep house for him.

(b) R.'s daughter is a housemaid in S.'s service. T. seduces her. She is confined in R.'s house and R. pays the expenses of her confinement.

A. It must be proved that the defendant has intentionally and without lawful justification induced the servant to break his contract of employment, and that damage has resulted to the plaintiff in consequence.—*Bowen* v. *Hall*, 6 Q. B. D. 333; *South Wales Miners' Federation* v. *Glamorgan Coal Co.*, (1905) A. C. 239.

(a) An action lies. It is not necessary to show more than *de facto* service (*Evans* v. *Walton*, L. R. 2 C. P. 615), and it suffices

that P. is *in loco parentis* to his niece.—*Thompson* v. *Ross*, 5 H. & N. 16.

(b) No action lies, for as the daughter was living away from home the fiction of service to her father is impossible.—*Whitbourne* v. *Williams*, (1901) 2 K. B. 722.

SECOND PAPER.—EQUITY.

1. *Q. Explain and illustrate by examples the following phrases:* —(i.) *express notice;* (ii.) *constructive notice;* (iii.) *following trust funds;* (iv.) *subrogation.*

A. (i.) By express notice is meant actual notice of the matter in question, as, *e.g.*, that a previous vendor did not receive the purchase-money. (ii.) Constructive notice means that actual knowledge has been obtained of matters which suggest the facts in question (*e.g.*, the absence of a receipt clause in the conveyance suggests non-payment of the price), or that such knowledge, or knowledge of the facts in question themselves, would have been obtained if the inquiries proper to the occasion had been made, *e.g.*, a purchaser who abstains from any investigation of title has constructive notice of any facts which such investigation would have revealed. (iii.) By following trust funds is meant the right of the beneficiary, where the trust property has been improperly disposed of by the trustee, to claim all property or money that can be identified as having been received in exchange for the trust property. Thus, if a trustee wrongfully sells the trust estate, and pays the money into his own account at a bank, the beneficiaries are entitled to it as against his trustee in bankruptcy. (iv.) Subrogation is the right of one person to stand in the shoes of another and take advantage of that other's rights, *e.g.*, the right of an insurer who has paid compensation for a loss to enforce all the rights of the insured.

2. *Q. Explain the maxim Equity follows the Law, and discuss its application to equitable interests in freehold land.*

A. The maxim means that equitable interests in general have the same incidents and attributes as have the corresponding legal interests. Thus, equitable estates in land permit of being entailed, devolve on the owner's death in the same manner as the legal estate, and are equally affected by the customs of gavelkind or borough English.

3. *Q. A. and B. are trustees who have* 10,000*l. to invest.*

They agree to invest this sum in certain securities which are proper for the investment of trust funds and hand over the 10,000*l. to X., a reputable stockbroker, for this purpose. X. immediately applies the money in payment of his own debts. A. and B. neglect to make any inquiries as to whether X. has in fact purchased the securities till six months later, when X. becomes bankrupt, and then they discover the fraud.*

Are A. and B. liable to replace the 10,000*l.? Would it make any difference if X.* (i.) *had not actually misapplied the* 10,000*l. till just before his bankruptcy;* (ii.) *had been not a stockbroker but a solicitor?*

A. The trustees are not liable, for in the circumstances they were justified in delegating the task of investment (*Speight* v. *Gaunt*, 9 App. Cas. 1), and though they were guilty of a breach of trust in allowing the monies to remain so long in the hands of X. without inquiry (*Wyman* v. *Paterson*, (1900) A. C. 271), it was not that breach of trust which occasioned the loss. But in case (i.) they would be liable, for if they had made proper inquiries they could have prevented the loss, and in case (ii.) they would also be liable, for even where they can delegate, trustees must not employ an agent out of the ordinary course of his business.—*Fry* v. *Tapson*, 26 Ch. D. 268; *Wyman* v. *Paterson*, *supra*.

4. *Q. Explain what is meant by contribution between co-trustees, and how far (if at all) it applies where* (i.) *the breach of trust is fraudulent and all the co-trustees are parties to the fraud;* (ii.) *the breach is fraudulent and all the co-trustees are not parties to the fraud;* (iii.) *one of the co-trustees is himself a beneficiary under the trust.*

A. By contribution is meant that if trustees are equally to blame for a breach of trust, and one of them is made liable for the consequent loss and pays the whole, he is entitled to recover a proportion from his co-trustee. But (i.) the case of *Att.-Gen.* v. *Wilson*, Cr. & Ph. 1, is usually treated as authority for saying that there is no right of contribution if the breach of trust is a fraudulent one to which all the trustees are parties; (ii.) if only some of the trustees are fraudulent, the right as against them appears to be a right of indemnity; and (iii.) where one of the trustees is a beneficiary he cannot claim contribution in respect of so much of the loss as represents his own loss from the breach of trust as beneficiary.—*Chillingworth* v. *Chambers*, (1896) 1 Ch.

685. See, generally, Hart's Digest of the Law of Trusts, pp. 305 *et seq.*

5. *Q. Under what circumstances has a trustee a right to indemnity against his cestuis que trust personally for costs and expenses properly incurred by him as trustee?*

A. Where the beneficiary is *sui juris* and beneficially entitled to an interest which he cannot disclaim, he is bound, in the absence of any contract to the contrary, to indemnify his trustee. (*Hardoon* v. *Belilios*, (1901) A. C.). This right is, however, apparently restricted to cases where the beneficiary is absolutely entitled (see Hart's Digest of the Law of Trusts, p. 228), though it continues as to contingent claims under existing contractual liabilities notwithstanding an assignment of that interest by the beneficiary.—*Matthews* v. *Ruggles-Brise*, (1911) 1 Ch. 194.

6. *Q. X. and Y. are trustees of a leasehold mansion house for A. for life and then to sell. The lease reserves a rent and contains various covenants enforceable by forfeiture. A. wishes to live in the house but X. and Y. refuse to give her possession.*

Advise A. as to her position.

A. A. should be advised that while she is not entitled to possession as of course, the Court in the exercise of its discretion will put her into possession provided due security is given for the protection of the property.—*Re Newen*, (1894) 2 Ch. 297.

7. *Q. X. and Y. are executors of a will under which A. is given a legacy. A. does not learn of the legacy until fifteen years after the testator's death. He then applies for payment of it, but X. and Y. though they have funds in hand refuse to pay it. Can A. recover it from them? Would it make any difference if X. and Y. were directed by the will to hold the legacy in trust for A.?*

A. The claim is statute-barred. (Real Property Limitation Act, 1874, s. 8.) But if the legacy was held in trust the statute would not run in favour of the trustees, sect. 8 of the Trustee Act, 1888, not applying, since the trust property remains in the hands of the trustees.

8. *Q. Under what circumstances is a legacy to a creditor treated as being in satisfaction of the debt due to him?*

A. Where a debt is due at the date of the will, and testator

leaves his creditor a pecuniary legacy equal to or greater than the amount of the debt, and in every other respect as advantageous to the creditor as the debt was, the legacy is treated as a satisfaction of the debt unless a contrary intention on the part of testator appears.—*Talbot* v. *Shrewsbury*, II. White and Tudor's Eq. Cas. 375.

9. *Q. A., the owner of Blackacre, mortgages it to B., and subsequently by way of second mortgage to C., and third mortgage to D.*

D. wishes to redeem. Who are the necessary parties to the action, and what relief should be claimed in it?

A. D. must make A. the mortgagor party to the action, and also C., but although he cannot redeem C.'s mortgage without foreclosing A., or redeem B.'s mortgage without redeeming C.'s mortgage, he can redeem C.'s mortgage without also redeeming B.'s mortgage. B. need only be joined if D. in addition to claiming, as he should, foreclosure against A. and redemption against C., is also claiming redemption against B.

10. *Q. Under what circumstances and in what manner can a legal mortgagee appoint or obtain the appointment of a receiver of the rents and profits of the mortgaged property? Who is responsible for the acts of such a receiver?*

A. A receiver can be appointed by writing under the hand of the mortgagee when (a) notice to pay off has been given and default made for three months; (b) some interest is in arrear for two months; or (c) there has been a breach of the provisions other than the covenant to repay contained in the mortgage or in the Conveyancing Act, 1881, to be observed by the mortgagor or some person concurring in making the mortgage. (Conveyancing Act, 1881, ss. 19, 20, 24.) The receiver is deemed to be agent of the mortgagor, who is liable accordingly for the receiver's acts.—*Ibid.* s. 24; Student's Conveyancing, pp. 218, 224.

LAW OF EVIDENCE AND CIVIL PROCEDURE.

1. *Q. Are there any and what matters which are outside the jurisdiction of the High Court of Justice and yet can be tried in a County Court?*

A. Applications under (*inter alia*) (i.) Alkali Works Regulation

Acts, 1888 and 1892; (ii.) Allotments and Cottage Gardens Compensation for Crops Act, 1887; (iii.) Ballot Act, 1872, s. 33; (iv.) Brine Pumping Act, 1891; (v.) Commons Act, 1876; (vi.) Employer and Workmen Act, 1875; (vii.) Employers' Liability Act, 1880; (viii.) Factory and Workshops Act, 1901; (ix.) Friendly Societies Act, 1896, s. 25.—See Encyclopædia of the Laws of England, vol. 4, p. 133 *et seq.*

2. *Q. Explain the terms—*
(*a*) *An appearance to a writ;*
(*b*) *Entry for trial;*
(*c*) *Refreshing the memory of a witness.*

A. (a) If a defendant decides to defend an action, he must enter an appearance, that is to say, he or his solicitor must hand to the proper officer two copies of a memorandum in writing; one is sealed and returned, and the other is retained by the official. He must the same day give notice to the plaintiff or his solicitor, and send a copy of the sealed memorandum.

(b) After notice of trial given, the plaintiff, sometimes the defendant, "enters the action for trial," that is to say, he takes two copies of the pleadings, including the writ, to the proper officer, and leaves them for the use of the judge at the trial. The action is then entered in the list for trial.

(c) A witness when in the box is allowed to refresh his memory by looking at an entry or memorandum which he himself wrote or dictated shortly after the event which it records; or even an entry made by some one else which he saw, and read and approved as correct, very shortly after the event. He can only look at the original entry, not a copy, and counsel on the other side is entitled to look at it, and cross-examine on it.—Odgers on Pleading and Practice, pp. 5, 9 and 311; Student's Practice of the Courts, pp. 92, 234.

3. *Q. A paragraph appeared in a newspaper accusing the Mayor and the Town Clerk of a borough of buying up land which they knew would shortly be required for municipal purposes, and selling it to the Borough Council at a greatly enhanced price.*

Can the Mayor and the Town Clerk join as co-plaintiffs in the same action of libel? What persons may be made defendants?

A. Yes, for their claims arise out of the same transaction in re-

spect of which common questions of law and fact arise. (Ord. XVI., r. 1. *Booth* v. *Briscoe*, 2 Q. B. D. 496.) Any persons may be sued jointly, severally, or in the alternative (Ord. XVI. r. 4), so the proprietor, printer and publisher should all be sued.

4. *Q. Draft a Defence to the following*

Statement of Claim.

1. *The Plaintiff and Defendant are farmers and occupy neighbouring farms at Blackborough in the county of Kent.*

2. *The boundary between the two farms is a hedge and ditch forming part of defendant's farm.*

3. *On May 6th, 1912, the defendant turned out a bull into his field adjoining plaintiff's farm. The defendant negligently omitted to fasten up the bull in any way, and in consequence the bull broke through the said hedge and trespassed upon the plaintiff's farm and caused great damage.*

Particulars of Damage.

(*a*) *Loss of crop of* $1\frac{1}{4}$ *acres sown with barley and trodden down by the bull,* 15*l.*

(*b*) *Loss of three sheep driven on to the railway by the bull and killed there,* 6*l.*

(*c*) *Loss of sheep dog tossed and killed by the bull,* 5*l.*

(*d*) *Fee of veterinary surgeon who attended the dog,* 2*l.* 2*s.*

(*e*) *Damages for physical injuries sustained by plaintiff when attempting to drive the said bull off the land, medical and other expenses, hiring substitute and loss of profit,* 300*l.*

The plaintiff claims damages.

Advise the defendant whether he is entitled to an order for any and what particulars before drafting his Defence.

A. (1) The defendant denies that the hedge and ditch referred to in paragraph 2 of the Statement of Claim form any part of his farm or are his property. (2) The defendant denies the allegation in paragraph 3 of the plaintiff's Statement of

Claim that he turned the bull into a field adjoining the plaintiff's farm, or that he was negligent in the keeping of the said bull or at all, or that the bull broke through the said hedge or trespassed on the plaintiff's land and caused great or any damage. (3) In the alternative defendant says that plaintiff was bound by prescription to repair the said hedge and ditch, and keep the same in repair so as to prevent cattle lawfully being in either of the said farms from escaping into the other of them, and at the time of the alleged trespass the said hedge and ditch were out of repair, and by reason thereof the defendant's bull then lawfully being in the said field of the defendant escaped therefrom into the said farm of the plaintiff, which is the alleged trespass.

Application should in this case be made for particulars of damage, of personal injury, medical expenses, hiring substitute, and loss of profit.

5. *Q. The Statement of Claim has been duly delivered in three actions; in the first the claim is for the recovery of possession of land; in the second for unliquidated damages; in the third an injunction is claimed. No Defence has been delivered in any of the actions, although the time for doing so has expired.*

What is the next step which you would advise each of the plaintiffs to take?

A. (i.) The plaintiff should sign judgment for possession of the land with costs.

(ii.) The plaintiff should sign interlocutory judgment, and issue a writ of enquiry to the undersheriff to assess the damages.

(iii.) The plaintiff should move for judgment under Ord. XXVII. r. 11.—Odgers on Pleading and Practice, p. 250. Student's Practice of the Courts, p. 173.

6. *Q. "As a general rule nothing that is said in the absence of a party is evidence against him." State the exceptions to this rule.*

A. Such statements are admissible (1) as being *res gestae, i.e.*, so closely connected with a material fact as to form part of the transaction at issue; (2) where it has been proved that two

or more are engaged in a joint enterprise (*e.g.*, a criminal conspiracy), anything said by either in furtherance of their common object is evidence against the other; (3) in cases of rape or indecent assault complaints by prosecutrix are admissible as negativing consent, or as corroboration of the prosecutrix's evidence; (4) as dying declarations in murder and manslaughter cases; (5) as statements by a person with respect to his state of health or mental feelings or condition where such state, feeling, or condition is material to the issue; (6) where statute so provides (*e.g.*, depositions under the Indictable Offences Act, 1848).

7. *Q. What persons are now incompetent to give evidence? Are there any questions which, though legitimate in form and relevant in matter, a witness can lawfully refuse to answer?*

A. Children who are too young to understand the nature of an oath are not competent witnesses (except in a few cases by virtue of express statutory provision), nor are insane persons. A witness can refuse to answer any question likely to incriminate him, and in any proceeding instituted in consequence of adultery, he need not answer a question tending to show that he has been guilty of adultery, unless he has previously denied it on oath.—Evidence Act, 1869, s. 3. Student's Statute Law, p. 316.

8. *Q. In an action for breach of promise of marriage counsel for the defendant sought to ask a witness who was called to corroborate the plaintiff—*

(*a*) *Whether he had not committed perjury at a certain trial five years ago.*

(*b*) *Whether he had not been convicted of perjury.*

Is either question admissible? If so, and if the witness replies "No," can any and what evidence be called to contradict him?

A. (a) This question is admissible: if the witness replies in the negative his answer must be accepted as final; no evidence can be called to contradict it.

(b) This question is admissible: if he denies the fact or refuses to answer, the opposite party may prove such conviction, however irrelevant to the issue the fact of such conviction may be.—Odgers on Pleading and Practice, p. 313.

9. *Q. In an action for breach of contract the plaintiff has produced a letter written to him by the defendant dated March 25th, 1912, and commencing with the words: "Yours of the 23rd instant to hand."*

Can the plaintiff compel the defendant to produce the letter of the 23rd at the trial, and, if so, by what means? Can he put in a copy of the letter of the 23rd if he has one? Can either party give parol evidence of the terms of that letter if (a) the original, or (b) a copy of it is in existence?

A. Yes, by notice. On proof that due notice was served a reasonable time before trial to produce the original, and that the original is in the defendant's possession, a copy may be put in on non-production of the original. The plaintiff can give parol evidence of the terms, but not the defendant in whose possession the original is.—Odgers on Pleading and Practice, 319.

10. *Q. Can evidence not given at the trial of the action ever be brought before the Court of Appeal? If so, in what cases and in what manner can it be so adduced?*

A. Yes; (i.) on interlocutory applications; (ii.) evidence as to matters which have occurred after the date of the decision from which the appeal is brought, and (iii.) by special leave.—Student's Practice of the Courts, pp. 312, 313.

GENERAL PAPER.

Part A.—Common Law.

1. *Q. By a deed of apprenticeship, in consideration of a premium of 100l., the master undertakes to teach and the apprentice undertakes to serve for five years. Advise if any portion of the premium can be recovered if at the end of the first year the master (a) dies, or (b) becomes bankrupt.*

A. (a) No part of the premium can be recovered merely be-

cause the master dies, since the failure of consideration is not total and the premium is not apportionable.—*Whincup* v. *Hughes*, L. R. 6 C. P. 78.

(b) If the master becomes bankrupt, the trustee in his bankruptcy may, on the application of the apprentice or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable out of the bankrupt's property to or for the use of the apprentice.—Bankruptcy Act, 1883, s. 41.

2. *Q. B., a manufacturer, verbally agrees to sell certain goods to A. to be delivered in monthly instalments during a period of three years. B. sends some goods which are accepted and actually received by A., but refuses to send more, whereupon A. sues him. Has B. any defence to the action?*

A. B. can plead sect. 4 of the Statute of Frauds, the contract being one which is not to be performed within a year. The acceptance and receipt of the goods by A. does not take the case out of the operation of sect. 4.—*Prested Miners Co., Ltd.* v. *Gardner, Ltd.*, (1911) 1 K. B. 425.

3. *Q. How far, if at all, can an employer rely on the defence of contributory negligence (a) in an action under the Employers' Liability Act,* 1880, *(b) in an arbitration under the Workmen's Compensation Act,* 1906?

A. (a) An employer can rely on the defence of contributory negligence in an action under the Employers' Liability Act, 1880. (*McEvoy* v. *Waterford S.S. Co.*, 18 L. R. Ir. 159.) (b) In an arbitration under the Workmen's Compensation Act, 1906, contributory negligence is no defence; the only defence is that the accident causing the injury in respect of which compensation is sought was occasioned by the serious and wilful misconduct of the workman, and even that is not a defence if it has resulted in death or serious and permanent disablement.

4. *Q. A. has maliciously caused B. to be adjudicated bank-*

rupt. In what circumstances, if at all, has B. a right of action against A. for so doing?

A. If the proceedings were instituted without reasonable and probable cause and with malice B. has an action against A., but the action will not lie until the adjudication has been set aside.—*Metropolitan Bank* v. *Pooley*, 10 App. Cas. 210.

Part B.—Equity.

1. *Q. A. devised all his real estate to trustees, upon trust as to his mansion-house for a Hospital, for the purposes of which it was peculiarly suitable; and upon trust to sell his lands in Middlesex and apply the proceeds for the benefit of another Hospital, and to divide his lands in Kent amongst such charities as the trustees should determine.*

The trustees refuse to select any charities. What are the rights of the Hospitals under the will, and how will the lands in Kent be disposed of?

A. The devise of the mansion house falls within the Mortmain and Charitable Uses Acts, and the house will have to be sold within a year of the testator's death unless an application is made to the Court or Charity Commissioners for an order sanctioning its retention; the devise of the lands in Middlesex upon trust to sell is valid and enforceable, and this case does not fall within the restrictive provisions of the Mortmain and Charitable Uses Acts, and though trustees are bound to carry out the trust for sale within a reasonable time, they are not bound to sell within a year of the testator's death.—*In re Sidebottom*, (1902) 2 Ch. 389.

The lands in Kent must be sold within a year after the testator's death, and the Court or Charity Commissioners will sanction a scheme for the application of the proceeds of sale at the instance of the Attorney-General.

2. *Q. Why, and in what cases, and to whom should notice of a mortgage be given by the mortgagee?*

A. Except in the case of a mortgage of a chose in action, a

first legal mortgagee need not give notice of his mortgage to anyone. A puisne mortgagee of any property should give notice to the first legal mortgagee in order to prevent him from tacking a further advance.

3. *Q. What is a portion?*

Under what circumstances is an unpaid portion satisfied by a legacy?

A. A portion, within the rule of equity against double portions, is a provision made for a child by a father or one standing *in loco parentis* to the child. Not every sum, however small, can reasonably be deemed a portion; the sufficiency of the gift and also its purpose must be considered; it must be something given to establish the child in life, to make a provision for him in the ordinary sense, such as a sum settled on marriage or money to start him in a business or profession. The gift need not, however, be cash, it may be of any kind of property so long as it may reasonably be supposed to be meant as a provision.

Where, on the marriage of a child or otherwise, a parent covenants to pay a sum of money by way of provision to or for the benefit of the child, and dies without having performed the covenant, but leaving an equal or larger sum by his will to or for the benefit of the child, in the absence of evidence of a contrary intention the unpaid portion is satisfied by the legacy.—See *Tussaud* v. *Tussaud*, 9 Ch. D. 363, and Brett, L. C. Eq., 5th ed., 114.

4. *A. invests trust-money in the purchase of real estate at X. and at Y., and of shares in a company. He borrows money from B. upon a legal mortgage of the land at X., and from C. upon a deposit of the title-deeds of the land at Y., and sells some of the shares to D., who is registered in the books of the company, and the rest to E., who is not yet so registered.*

What are the rights of the beneficiaries against B., C., D., and E. (none of whom had notice of the trust), and A.?

A. The only right the beneficiaries have against B. is to compel redemption of the mortgage property on payment off of B.'s charge. B. can plead that he is a purchaser for value who has

acquired the legal estate without notice. C. cannot so plead since his right is merely equitable, and between him and the beneficiaries the rule *Qui prior est in tempore potior est in jure* would apply and the beneficiaries could recover the deeds without redeeming. As against D., who also can plead that he is a purchaser for value who has acquired the legal interest without notice, the beneficiaries have no rights at all. As against E. the maxim is again applicable, and the beneficiaries are entitled to restrain the registration of the shares in his name. As against A. the beneficiaries have a claim to have the trust property restored; they can therefore compel him to discharge the land at X. from the mortgage to B., and to purchase back the shares from D., or, if the latter will not re-sell, to purchase other similar shares.

It is assumed that the investment was in each case unauthorized.

PART C.—EVIDENCE AND CIVIL PROCEDURE.

1. *Q. A written contract was made between A. and B. Can evidence be given in an action for breach of it that it was (subsequently to the making of it) by word of mouth (a) rescinded, or (b) altered?*

A. It seems that evidence can be given that the contract was rescinded by word of mouth, but not that it was altered.—*Goss* v. *Nugent*, 5 B. & Ad. 58; Powell, Evidence, 9th ed., 182.

2. *Q. The amount of a Promissory Note is stated in words to be* 125*l.*, *and in figures to be* 175*l.*, *and the stamp is sufficient for the latter sum. Can the holder give evidence to shew that the true amount of the Note was* 175*l. and not* 125*l.?*

A. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable (Bills of Exchange Act, 1882, s. 9), therefore parol evidence cannot be given.—Student's Statute Law, p. 27.

3. *Q. What is the consequence of not dealing specifically with*

an allegation in a Statement of Claim, and what exceptions are there to the general rule?

A. Every allegation of fact in a statement of claim, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, is taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.—R. S. C., Ord. XIX. r. 13. Student's Practice of the Courts, p. 147.

4. *Q. What are the various orders that may be made on a Summons under Order XIV. r.* 1?

A. An order may be made empowering the plaintiff to enter judgment for the amount claimed, or giving the defendant unconditional leave to defend, or giving him leave to defend subject to such terms as to giving security, or time or mode of trial, or otherwise, as the judge may think fit. (Ord. XIV. rr. 1 and 6.) Or, with the consent of the parties, an order may be made referring the action to a Master, or the action may be finally disposed of without appeal in a summary manner.—*Ibid.* r. 7. Student's Practice of the Courts, p. 138.

Part D.—Real Property and Conveyancing.

1. *Q. What powers are implied in a mortgage? Have all mortgagees the same powers?*

A. The Conveyancing Act gives a power to lease (sect. 18), and where the mortgage is by deed, powers to sell, appoint a receiver, insure and cut timber if in possession. These latter powers belong only to mortgagees by deed.

2. *Q. Discuss the rule against double possibilities and the rule against perpetuities, with respect* (*a*) *to legal estates, and* (*b*) *to equitable estates in land, and* (*c*) *to personal property.*

A. The rule—generally called the rule in *Whitby* v. *Mitchell* (44 C. D. 85)—that a remainder cannot be limited to the child of

an unborn person after a life estate to the unborn parent, applies not only to legal but also to equitable (*Re Nash*, (1910) 1 Ch. 1) contingent remainders; but has no application to personalty. (*Re Bowles*, (1902) 2 Ch. 650.) The perpetuity rule applies to springing or shifting uses and executory devises, to equitable estates in realty, to legal contingent remainders (*Re Ashforth*, (1905) 1 Ch. 535), or equitable contingent remainders (*Abiss* v. *Burney*, 17 Ch. D. 211), and to all contingent limitations of personalty, including leaseholds. Williams' Real Property, 405 *et seq.*

3. *Q. A., a British subject, domiciled in England and possessed of English real and leasehold estate and of other personal property, by a will made in France, unattested, but valid according to the law of France, left all his property to his wife, who survived him. He had one child only.*

Who is entitled to his property?

Would it have made any difference if he had been domiciled in France?

A. By virtue of the Wills Act, 1861, the will is a valid will in respect of the personal property including leaseholds (*Re Grassi*, (1905) 1 Ch. 584), which are accordingly taken by the wife. The will is ineffectual as regards the English realty, which is governed by the *lex loci* and passes as on intestacy to the child as heir(subject to the widow's dower if she is entitled). It would have made no difference had deceased been of French domicile, though it would have made a difference had deceased not been a British subject, for then, though the will would have been good at common law as to the pure personalty, not only the real but the leasehold estate would have been dealt with according to the *lex loci*, and would have descended by English law as on an intestacy.

4. *Q. A house is demised to A., who sells it to B. B. mortgages it by demise to C., together with other property, to secure £500, and afterwards agrees to sell it to D. for £700, free from incumbrances.*

Sketch the form of the assignment to D.

Parties, B., C., D., recitals of grant and assignment of lease,

of mortgage, of agreement for sale, of the amount still due on mortgage, and that C. has agreed to join on payment off of what is due. Testatum, that in consideration of £500 paid to C. by D. by direction of B. (receipt, &c.), and of £200 paid by D. to B. (receipt, &c.), C., as mortgagee, surrenders and releases, and B. as beneficial owner assigns and confirms unto D., All those the parcels, to hold for the residue of the term, subject to the rent reserved and covenants contained in the lease, and discharged from all claims under the mortgage, to the intent that the sub-term created by the mortgage shall merge and be extinguished in the term granted by the lease. Covenant by D. to indemnify B. against breach of covenants (in cases where B. is under covenant to indemnify A.).